

**FRA Opinion – 4/2018**  
**[Charter of Fundamental Rights]**

Vienna, 24 September 2018

# Challenges and opportunities for the implementation of the Charter of Fundamental Rights

Opinion of the  
European Union Agency for Fundamental Rights

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## Acronyms

ACER	Agency for the Cooperation of Energy Regulators
BBI JU	Bio-based Industries Joint Undertaking
CDT	Translation Centre for the Bodies of the European Union
CEDEFOP	European Centre for the Development of Vocational Training
CEPOL	European Union Agency for Law Enforcement Training
CHAFEA	Consumers, Health, Agriculture and Food Executive Agency
CJEU	Court of Justice of the European Union (CJEU is also used for the time predating the entry into force of the Lisbon Treaty in December 2009)
CPVO	Community Plant Variety Office
CS2JU	Clean Sky 2 Joint Undertaking
EACEA	Education, Culture and Audiovisual Executive Agency
EASA	European Aviation Safety Agency
EASME	Executive Agency for Small and Medium-sized Enterprises
EBA	European Banking Authority
ECDC	European Centre for Disease Prevention and Control
ECHA	European Chemicals Agency
ECHR	European Convention on Human Rights
ECSEL JU	Electronic Components and Systems for European Leadership Joint Undertaking
ECtHR	European Court of Human Rights
EEA	European Economic Area
EFCA	European Fisheries Control Agency
EFSA	European Food Safety Authority
EIGE	European Institute for Gender Equality
EIOPA	European Insurance and Occupational Pensions Authority
EIT	European Institute of Innovation and Technology
EMA	European Medicines Agency
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ENISA	European Union Agency for Network and Information Security
ERA	European Railway Agency
ERCEA	European Research Council Executive Agency
ESA	Euratom Supply Agency
ESMA	European Securities and Markets Authority
ETF	European Training Foundation
EU	European Union
EU-LISA	European Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice

EU OSHA	European Agency for Safety and Health at Work
EUIPO	European Union Intellectual Property Office
EUMS	EU Member States
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EUROJUST	European Union's Judicial Cooperation Unit
EUROPOL	European Union Agency for Law Enforcement Cooperation
F4E	Fusion for Energy
FRA	European Union Agency for Fundamental Rights
Frontex	European Border and Coast Guard Agency
GSA	European Global Navigation Satellite Systems Agency
INEA	Innovation and Networks Executive Agency
NGO	Non-governmental organisation
REA	Research Executive Agency
SatCen	European Union Satellite Centre
SESAR JU	Single European Sky ATM Research Joint Undertaking
SRB	Single Resolution Board
TFEU	Treaty on the Functioning of the EU
The Charter	EU Charter of Fundamental Rights

THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS (FRA),

Bearing in mind the Treaty on European Union (TEU), in particular Article 6 thereof,

Recalling the obligations set out in the Charter of Fundamental Rights of the European Union (the Charter),

In accordance with Council Regulation 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights (FRA), in particular Article 2 with the objective of FRA *“to provide the relevant institutions, bodies, offices and agencies of the Community and its EU Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights”*,

Having regard to Article 4 (1) (d) of Council Regulation 168/2007, with the task of FRA to *“formulate and publish conclusions and opinions on specific thematic topics, for the Union institutions and the EU Member States when implementing Community law, either on its own initiative or at the request of the European Parliament, the Council or the Commission”*,

Having regard to Recital (13) of Council Regulation 168/2007, according to which *“the institutions should be able to request opinions on their legislative proposals or positions taken in the course of legislative procedures as far as their compatibility with fundamental rights are concerned”*,

Having regard to the request of the European Parliament of 26 April 2018 to FRA for an opinion to contribute to the preparation of the European Parliament Report on *“Implementation of the Charter of Fundamental Rights of the European Union in the EU institutional Framework”* (2017/2089(INI)),

SUBMITS THE FOLLOWING OPINION

## Opinions

### FRA Opinion 1: Involving independent external expert advice at EU level

During the past decade, the EU institutions have developed various procedures and mechanisms to help guarantee that EU law and policies respect the rights laid down in the Charter. But these are mainly internal procedures carried out by the services of the respective EU legislators – mainly the European Commission but potentially also the European Parliament and the Council of the European Union. Independent external expertise is regularly requested only with regard to processing personal data, via the European Data Protection Supervisor. FRA is currently not regularly consulted on legislative drafts that raise potential issues across the wide spectrum of rights covered in the Charter.

***The EU institutions should provide for enhanced forms of consultation, impact assessments and legal scrutiny, including by requesting advice from appropriate independent expert bodies, such as FRA, whenever a legislative file potentially promotes or negatively affects fundamental rights. More regular consultation could be provided for in a revised version of the inter-institutional agreement on better lawmaking. Charter focal points within the EU institutions – or their legal services – could help guarantee that fundamental rights-sensitive files receive the attention and scrutiny they deserve. This will help ensure Charter-compliant and thus sustainable EU legislation that avoids fundamental rights issues during implementation at national level and the risk of annulment by the Court of Justice of the European Union.***

### FRA Opinion 2: The Charter's relevance for EU agencies

All EU agencies are bound by the Charter of Fundamental Rights. FRA consulted all agencies; this revealed that the majority view their mandates as having some relevance to the implementation of the Charter. The agencies provided a rich spectrum of examples in this regard. However, their founding documents – many adopted before the Charter entered into force – hardly refer to the Charter or to fundamental rights more generally. Only very few contain specific fundamental rights-protection mechanisms. Moreover, when consulted on various concrete proposals to increase the Charter's presence in their internal and external work, the agencies' comments partly conveyed a certain skepticism. The proposals ranged from soft forms of cooperation to more operational proposals, such as establishing focal points. At the same time, some of the proposals were very well received by the agencies – such as the proposal to expand available training on fundamental rights.

***As a reminder of agencies and other bodies' legal obligations under the Charter, the EU legislator should insert a reference to fundamental rights whenever drafting or revising regulations or decisions setting up such agencies or bodies. Such an explicit reference in the agencies' founding documents would increase awareness of the Charter and of the agencies' means to promote Charter rights within their respective mandates. In addition, the EU legislator should carefully consider introducing, on a case-by-case basis, more operational mechanisms for the protection and promotion of fundamental rights – such as Charter focal points and fundamental rights officers.***

***The EU agencies should regularly exchange experiences and practices with regard to implementing the Charter, including in the various agencies' networks. Such exchanges should concretely assess the possibility of taking steps to further the protection and promotion of fundamental rights within and outside of the agencies.***

***Steps to consider include increasing fundamental rights-related training, collaborating with other agencies and stakeholders on fundamental rights and adopting relevant policy documents and mechanisms.***

### FRA Opinion 3: Policies promoting the Charter's use at national level

FRA's consultations made clear that there is a lack of national policies that promote awareness and implementation of the Charter. The instrument entered into force only nine years ago, but EU Member States are obliged to both respect the Charter's rights and to "promote the application thereof in accordance with their respective powers" (Article 51 of the Charter). Legal practitioners – especially those in national administrations, the judiciary and national parliaments – have a central role to play in the Charter's implementation. It is vital for them to be fully aware of the Charter's potential to effectively fulfill that role. At the same time, there is a need to increase awareness among rights holders so that rights are invoked and implemented in practice.

***EU Member States should ensure that targeted training modules are offered for national judges and other legal practitioners on a regular basis and in a manner that meets demands and guarantees sufficient ownership.***

***Member States should aim to regularly assess the Charter's actual use in national case law and legislative and regulatory procedures, with a view to identifying shortcomings and concrete needs for better implementation of the Charter at national level.***

***Member States should launch initiatives and policies aimed at promoting awareness and implementation of the Charter at national level, so that the Charter can play a relevant role wherever it applies. Such initiatives and policies should be evidence-based, building on regular assessments of the use and awareness of the Charter in the national landscape.***

### FRA Opinion 4: The Charter and legislative processes in EU Member States

Article 51 (field of application) of the EU Charter of Fundamental Rights provides that all national law implementing EU law has to conform with the Charter. Although a significant proportion of national bills contains elements falling within the scope of EU law, the available evidence suggests that the Charter is used neither frequently nor in detail in legislative impact assessments and legal scrutiny of bills. Reference is often made to national and international law, but not to the Charter. Adding the 'Charter perspective' allows detecting, at an early stage, both possible limitations of Charter rights and the draft legislation's potential to promote Charter rights and principles.

***EU Member States should review their national procedural rules on legal scrutiny and impact assessments of bills from the perspective of the EU Charter of Fundamental Rights. Such procedures should explicitly refer to the Charter, just like they do to national human rights instruments, to minimise the risk that the Charter is overlooked.***

***Member States should consider a more consistent 'Article 51 screening' in the legislative process to assess at an early stage:***

- ***whether or not a legislative file (partly) falls within the scope of EU law and thus also the Charter;***
- ***whether the legislative proposal could potentially limit Charter rights;***

- *whether such limitations are in line with Article 52(2) of the Charter;*
- *whether the legislative proposal has the potential to proactively promote the application of Charter rights and principles.*

***Standardised handbooks outlining practical steps to take to check whether the Charter applies – which so far exist only in very few EU Member States – would be useful tools for legal practitioners. FRA’s forthcoming Handbook on the applicability of the Charter will serve as a model for such tools.***

## FRA Opinion 5: The Charter and its use before national courts

FRA regularly collects relevant decisions by judges. They paint a mixed picture of the Charter’s use at national level. The number of judicial decisions in which courts refer to the Charter in detail and/or where a reference to the Charter has an impact on a case’s outcome appears low. At the same time, national case law shows that the Charter is relevant both for individual rights holders and for the development of the legal systems. For case law to more consistently use the Charter’s potential, awareness of the Charter needs to be increased amongst judges. In addition, courts need to exchange relevant practical experiences – both within states and across national borders. Courts can consult references to case law collected in Charterpedia and communicate relevant judgments directly to FRA at [charter@fra.europa.eu](mailto:charter@fra.europa.eu).

***The EU and its Member States should encourage greater information exchange on experiences with and approaches to referencing and using the Charter. This exchange should take place both between judges of different courts within a given Member State and between judges of comparable courts across Member States. In encouraging this information exchange, EU Member States should make best use of existing judicial networks and EU funding opportunities. Courts, equality bodies and other National Human Rights Bodies could consider communicating their use of the Charter on their websites, and national courts could insert Charter-related search fields in their case law databases to allow for better access to Charter-relevant case law..***

## FRA Opinion 6: EU agencies’ potential to assist EU Member States

Based on their mandates, EU agencies carry out countless fundamental rights-relevant activities in diverse contexts. This includes offering expertise, advice and practical support to EU Member States, such as through training activities, handbooks and practical tools. There is potential to increase such cooperation by better mapping existing practices and unmet needs at Member State-level.

***EU agencies should exchange their practices and experiences, including in the relevant agencies’ networks, on how to best assist EU Member States in implementing the Charter. Member States in turn could annually exchange experiences and express needs with regard to assistance from EU agencies in the Council’s Working Party on Fundamental Rights, Citizen’s Rights and Free Movement of Persons (FREMP).***

## FRA Opinion 7: A new Charter-conditionality for EU funds

The provision of EU funds for the training of legal practitioners is key. However, currently provided training is dedicated to fundamental rights only to a minor degree. EU programmes that are earmarked for fundamental rights-related projects form another important contribution – but have a limited financial dimension. EU Funds,



however, have remarkable practical impact. The large EU Funds – like the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF), the Asylum and Migration Fund (AMF), and others – represent a substantial portion of the EU's overall budget. Significantly, the European Commission has proposed a new form of conditionality for these funds. This would not just cover a few selected dimensions of the Charter, as has been the case so far. Instead, the full spectrum of Charter rights would need to be applied throughout the full project cycle of the activities using resources provided by the EU Funds. The potential practical implications of this revamped conditionality are considerable – if the obligation is coherently referred to in the relevant legal texts and comes with effective monitoring mechanisms at the national level.

***The EU legislator should adopt the new enabling condition covering the effective application and implementation of the EU Charter of Fundamental Rights, as laid down in the Common Procedure Regulation proposed by the European Commission for the next Multiannual Financial Framework 2021-2027. The legislator should enhance the visibility of this new conditionality by introducing strong and consistent fundamental rights clauses in the operational text of the draft regulations establishing the large EU Funds.***

***When implementing the financial instruments, EU institutions should put special emphasis on the horizontal conditionalities related to fundamental rights and make sure that the respect for the Charter provisions and the promotion of their application is mainstreamed in all activities.***

***EU Member States should engage in a dialogue with Equality Bodies and National Human Rights Institutions, including Ombuds Institutions, to explore their effective participation in the preparation phase and the monitoring process of the implementation of EU-funded programmes. Allocating human resources and adequate funding to them, and earmarking EU resources for that purpose, will bolster the efficiency of the new Charter conditionality. Where Member States and competent national authorities consider it useful, the European Commission, with the support of agencies such as FRA, could provide technical assistance and training to Equality Bodies and National Human Rights Institutions, including Ombuds Institutions, on how to monitor effectively the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of Persons with Disabilities with regard to the implementation of the EU Funds.***

## FRA Opinion 8: Regular exchange among EU Member States

No institutional space and practice within the EU system is currently specifically dedicated to in-depth exchanges of Member States' experiences with implementing the Charter. The Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons (FREMP) is the Council's working group responsible for fundamental rights-related issues, including the Charter. It brings together relevant civil servants in this regard. The working group appears to provide an appropriate platform for all three branches of government to exchange experiences with Charter implementation in order to learn from promising practices and address shortcomings.

***The EU and its Member States should consider establishing an annual 'Charter exchange' in the Council's "Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons" (FREMP). Based on relevant information regarding local, regional and national practices and experiences concerning the***

*implementation of the Charter, such an exchange could help promote a common understanding of the Charter's practical application and its needs. Such an annual Charter exchange in FREMP should also allow for relevant participation by the European Commission and the European Parliament so that the results can also feed into the work of these institutions. The Charter exchange could be prepared by an expert seminar and/or a structured process collecting the relevant data, evidence and promising practices.*

## Introduction

The President of the European Parliament requested the European Union Agency for Fundamental Rights (FRA), by letter of 26 April 2018, to analyse the role and relevance of the EU, “especially the EU agencies, as far as the implementation of the provisions of the Charter by the EU Member States in their legislation, case law and policies is concerned”.

The Parliament is in the process of drafting an own-initiative report on the “Implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework”, being prepared in the Parliament’s Committee for Constitutional Affairs (AFCO).<sup>1</sup> With this Opinion, FRA aims to contribute to the European Parliament’s report. The request aims at understanding the interaction between the Charter’s implementation at national and EU level, and whether there are “instruments, mechanisms and practices” available at EU level to assist Member States to better implement the Charter.

Against this background, this FRA Opinion provides evidence and analysis on the following questions:

- Is the EU putting sufficient emphasis on the Charter, and how could it extend this emphasis? This Opinion focuses on EU agencies; a different study commissioned by AFCO dealt with EU institutions. See Section 1.
- Is the Charter used within the three branches of national government, namely government policies, national legislation and national courts? See Section 2.
- How is the EU assisting Member States to better implement the Charter, and how could these instruments be improved? See Section 3.

The Opinion draws on FRA’s internal analysis and input collected from:

- replies by the EU agencies who responded to a questionnaire sent by the Chairperson of AFCO to all agencies (see Annex 2);
- its multidisciplinary expert network FRANET, covering all 28 EU Member States, as well as feedback received to questions sent to FRA’s National Liaison Officers working for the governments in the 28 EU Member States;

replies to a questionnaire of 10 questions sent by FRA to the participants of its Fundamental Rights Platform (a platform currently bringing together 714 non-governmental organisations and civil society institutions active in the field of fundamental rights).

This Opinion should be read in light of other work the agency is carrying out on the Charter of Fundamental Rights. Amongst others, this strand of FRA’s work includes the database Charterpedia, FRA handbooks and opinions.

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<sup>1</sup> The report [\*“Implementation of the Charter of Fundamental Rights of the European Union in the EU institutional Framework”\*](#) (2017/2089(INI)) is expected to be voted upon in the Committee in early 2019.

# 1. EU level: implementation of the Charter by the EU, especially its agencies

## 1.1. EU legislative process

The adoption of the Charter had a positive impact on the standing of fundamental rights within the EU's administrative culture.<sup>2</sup> All three major EU institutions have adapted their institutional rules to give fundamental rights more relevance and visibility. The European Commission took the lead in pledging to systematically verify the compatibility of its legislative proposals with the Charter at an early stage. Fundamental rights are taken into consideration both at the stage of the assessment of impacts<sup>3</sup> as well as in the check of the legality of legislative proposals. The Council adopted guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies in 2011 and revised these in 2014.<sup>4</sup> The European Parliament inserted a new rule on respect for fundamental rights in its rules of procedure in 2009. This rule 38 allows the Committee on Civil Liberties, Justice and Home Affairs (LIBE) of the European Parliament to submit an opinion on a legislative file for which it is actually not responsible. This can be triggered when it is considered that the legislative proposal does not fully comply with rights enshrined in the Charter.<sup>5</sup>

The case law of the Court of Justice of the European Union (CJEU) clearly signals how important it is to ensure that EU legislation does not violate fundamental rights. The CJEU expects the wording of EU legislation to show that, when adopting it, "the Council and the Commission took into consideration methods...causing less interference" with fundamental rights.<sup>6</sup> It is hence necessary that the EU institutions strike "a proper balance between the various interests involved".<sup>7</sup> The Court assesses whether the EU legislator "exceeded the limits which compliance with the principle of proportionality imposes".<sup>8</sup> If the piece of EU legislation (read in context with its preparatory material) does not stand this test, there is a risk that the CJEU will strike down the respective

<sup>2</sup> Toggenburg, G. N. (2014), 'The EU Charter: Moving from a European Fundamental Rights Ornament to a European Fundamental Rights Order' in: Palmisano, G. (ed.), *Making the Charter of Fundamental Rights a Living Instrument*, Brill Publisher, 2014, pp. 10-29.

<sup>3</sup> Fundamental rights are now explicitly taken account of in the so-called Better Regulation "Toolbox", in which they constitute [Tool #28](#). The system was developed over time. Compare SEC(2009) 92 final of 15 January 2009 and SEC(2011) 567 final of 6 May 2011. Very rarely will the Commission be of the view that an impact assessment is not needed (see e.g. The Commission's proposal of 2 May 2018 for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018) 324 final and the critique expressed by the Court of Auditors in that regard in its opinion 1/2018, in OJ C 291, 17 August 2018). Sometimes lack of time might lead to a situation where no impact assessment is carried out (see e.g. the proposal for a regulation on the European Border and Coast Guard, COM(2018) 631 final, 12 September 2018, p. 14). Sometimes proposals are based on an external feasibility study (see e.g. the proposal for a regulation establishing a European Travel Information and Authorisation System (ETIAS), COM(2016) 731 final, 16 November 2016). It should be noted that even a very thorough assessment in terms of fundamental rights does not guarantee that the concerns raised are all taken into account at political level. An example is the regulation on the security of identity cards. See in this regard FRA (2018), [Fundamental rights implications of storing biometric data in identity documents and residence cards](#), FRA Opinion – 3/2018, Luxembourg, Publications Office of the European Union (Publications Office).

<sup>4</sup> Council of the European Union (2015), Doc. 5377/15, Brussels, 20 January 2015.

<sup>5</sup> Rule 38 of the European Parliament's rules of procedure. The procedure can be triggered by the committee responsible for the subject matter, a political group or at least 40 Members. The procedure has so far hardly been used (an example where the rule was used was the Anti-Counterfeiting Trade Agreement).

<sup>6</sup> CJEU, C-92/09, *Volker und Markus Schecke GbR* [GC], 9 November 2010, and C-93/09, *Hartmut Eifert v. Land Hessen*, para. 81.

<sup>7</sup> *Ibid.*, para. 83.

<sup>8</sup> *Ibid.*, para. 86.

act.<sup>9</sup> Not taking fundamental rights seriously from the very outset of the legislative process can therefore have a direct impact on the sustainability of the EU legislation adopted.

Alongside improvements over recent years, various proposals have been made to further strengthen the standing of fundamental rights in the legislative procedure at EU level. These focus on issues such as enhanced visibility of fundamental rights compliance assessment procedures, the degree of depth of such assessments, and strengthening of related inter-institutional cooperation.<sup>10</sup>

At national level, independent national human rights institutions are frequently consulted in the national legislative procedure – something that happens at EU level only regarding the processing of personal data, with the European Data Protection Supervisor regularly issuing opinions. This current *lacuna* is partly due to a mandate limitation of the EU's fundamental rights body: FRA's founding regulation does not allow FRA to issue opinions on draft EU legislation, unless it is explicitly requested to do so by the European Parliament, the Council of the European Union or the European Commission.

Against this background the FRA Management Board has proposed that “[w]here the EU legislator deals with legislative files that raise fundamental rights questions, the Agency should be able to provide its assistance and expertise where and when it is needed and not only when it is formally requested. Therefore, in order to make full use of the Agency’s expertise in the legislative process, the Founding Regulation should allow the Agency to deliver non-binding opinions on draft EU legislation on its own initiative.”<sup>11</sup>

Until the founding regulation is changed – which requires unanimity in the Council – it is up to the EU institutions to agree on a more systematic consultation of FRA. Such a structured engagement with FRA could help to further decrease the risk that EU legislation interferes with fundamental rights in ways that cannot be justified under the relevant standards. A more regular consultation of FRA would also be in line with the Conclusions adopted by the European Council at its meeting of 26 and 27 June 2014, where it noted that, among other measures, greater reliance on Eurojust and on FRA could support “the smooth functioning of a true European area of justice with respect for the different legal systems and traditions of the Member States”, by further enhancing “mutual trust in one another's justice systems”.<sup>12</sup> This is also the position

<sup>9</sup> CJEU, Joined cases C-293/12 and C-594/12, 10 June 2014.

<sup>10</sup> For literature on this topic, see for example, Fyhr, K (2016), [Making fundamental rights a reality in EU legislative process: Ex ante review of proposals for EU legislative measures for their compatibility with the Charter of Fundamental Rights of the European Union](#), Helsinki, University; De Schutter, O. (2016), [The implementation of the Charter of Fundamental Rights in the EU institutional framework](#), Study for the AFCO Committee; Smismans, S. and Minto, R. (2016), ‘Are integrated impact assessments the way forward for mainstreaming in the European Union?’, *Regulation & Governance*; Butler, Israel de Jesus (2012), ‘Ensuring Compliance with the Charter of Fundamental Rights in Legislative Drafting: The Practice of the European Commission’, *European Law Review*, Vol. 37, Issue 4, pp. 397-418.

<sup>11</sup> Recommendation number 7 of the [Recommendations of the Management Board of FRA to the EU legislators, following up on the second independent external evaluation of the Agency](#), Management Board Decision 2017/05, 14 December 2017. Note, for instance, the wording used in Article 58 (1) lit. g) of the proposal for a regulation on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC, which lists under the tasks of the European Data Protection Supervisor to “advise all Union institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data”. See COM(2017) 8 final, 10 January 2017.

<sup>12</sup> European Council (2014), EUCO 79/14, 27 June 2014, para. 11 of the Conclusions. Note that the mentioned guidelines on the methodological steps to be taken to check fundamental rights compatibility at the Council's

taken by the European Parliament, which stresses the need to “ensure that the Commission – and the Council, where it initiates legislation – where appropriate, make use of the external independent expertise of the FRA”.<sup>13</sup>

To more consistently implement these political statements in political practice, the EU institutions could agree to regularly request independent external advice where a legislative file has a special potential to promote, or risks unduly limiting, fundamental rights.<sup>14</sup> This process of prioritisation and external consultation could be coordinated within the respective EU institutions by drawing on Charter-focal points – persons or subunits tasked with special Charter-responsibilities.

## FRA Opinion 1: Involving independent external expert advice at EU level

During the past decade, the EU institutions have developed various procedures and mechanisms to help guarantee that EU law and policies respect the rights laid down in the Charter. But these are mainly internal procedures carried out by the services of the respective EU legislators – mainly the European Commission but potentially also the European Parliament and the Council of the European Union. Independent external expertise is regularly requested only with regard to processing personal data, via the European Data Protection Supervisor. FRA is currently not regularly consulted on legislative drafts that raise potential issues across the wide spectrum of rights covered in the Charter.

***The EU institutions should provide for enhanced forms of consultation, impact assessments and legal scrutiny, including by requesting advice from appropriate independent expert bodies, such as FRA, whenever a legislative file potentially promotes or negatively affects fundamental rights. More regular consultation of FRA could be provided for in a revised version of the inter-institutional agreement on better lawmaking. Charter focal points within the EU institutions – or their legal services – could help guarantee that fundamental rights-sensitive files receive the attention and scrutiny they deserve. This will help ensure Charter-compliant and thus sustainable EU legislation that avoids fundamental rights issues during implementation at national level and the risk of annulment by the Court of Justice of the European Union.***

### 1.2. Agencies and fundamental rights

Some Charter rights specifically refer to and address the EU agencies – such as the right to good administration, the right of access to documents, and the right to refer to the European Ombudsman (Articles 41, 42 and 43 of the Charter).<sup>15</sup> But it is important to

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preparatory bodies do refer to the possibility to “make use of the expertise of the European Union Agency for Fundamental Rights”. However, in the relevant final Section IV entitled “In case of doubt”, the guidelines do not refer to the possibility to request an opinion from FRA. The guidelines here refer the lawmaker only to the following three options: 1) “Consult the Council Legal Service”, 2) “Use the expertise of national experts in the capital”, 3) “Inform the FREMP Working Party or other preparatory body specialising in a specific fundamental right”. This was criticised as inconsistent, see De Schutter, O. (2016), *The implementation of the Charter*, p. 17.

<sup>13</sup> See [European Parliament resolution of 27 February 2014 on the situation of fundamental rights in the European Union \(2012\)](#) (2013/2078(INI)), point 8 (c).

<sup>14</sup> Such an enhanced coordination and openness for external independent advice would also form a natural building block of a “Union internal strategy on fundamental rights”, as envisaged by the Council in 2014. See Council of the European Union, JHA Council (2014), [Council conclusions on the Commission 2013 report on the application of the EU Charter of Fundamental Rights and the consistency between internal and external aspects of human rights’ protection and promotion in the European Union](#), 5 and 6 June 2014, para. 24.

<sup>15</sup> Also of relevance to the administrative culture of any agency is Art. 9 of the TFEU: “In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies.” See also Art. 263 (1) and (4), Art. 265, Art. 267 (1) lit b) and Art. 325 of the TFEU.



recall that the Charter is in its entirety addressed and applicable to “the institutions, bodies, offices *and agencies* of the Union” (Article 51 of the Charter).<sup>16</sup> Against this background it is indeed of interest to look into the Charter’s role in the administrative practice of EU agencies.

The Chairperson of the European Parliament’s AFCO Committee sent a questionnaire regarding the awareness and (current and potential) use of the Charter to 50 agencies and other bodies. The Parliament received replies from 42 agencies (see Annex)<sup>17</sup>, which were forwarded to FRA with the request to analyse the replies and present the analysis in this FRA Opinion. In addition, the Committee requested FRA to conduct “supplementary interviews with relevant interlocutors within the agencies”. FRA agreed with the Secretariat of the AFCO Committee to organise teleconferences with eight agencies that operate in the sphere of justice and home affairs, where fundamental rights protection is of particular relevance.<sup>18</sup> The following information is based on the responses to the questionnaire and the telephone interviews conducted. Given the amount of information gathered, the below just provides some illustrative examples.

Before coming to concrete examples of how the Charter is used and referred to by agencies, it is worth recalling the enormous diversity amongst the EU agencies consulted. First, there are – next to the Fundamental Rights Agency, which is tasked with dealing with all Charter rights – agencies who are specifically tasked with promoting and protecting certain fundamental rights. These include EIGE (Articles 21 and 23 of the Charter); the European Agency for Safety and Health at Work (EU-OSHA), which is mandated to promote safety and health at work (Articles 31 and 32 of the Charter); and the European Union Intellectual Property Office (EUIPO), mandated to enforce intellectual property rights, which is, as the agency noted in its response, “one of the cornerstones of the protection of Article 17.2 of the Charter” (protection of intellectual property). This can also be said of the European Environment Agency (EEA), which noted that it “aims to support sustainable development and to help achieve significant and measurable improvements in Europe’s environment, through the provision of timely, targeted, relevant and reliable information to policymaking agents and the public. The EEA contributes in this way to the promotion of the fundamental right on environmental protection (Article 37 of the Charter)”.

Second, there are agencies mandated to deal with particularly fundamental rights-sensitive areas, such as those operating in the sphere of justice and home affairs. This requires them to pay particularly close attention to whether agency operations encroach on fundamental rights. An example is Frontex, which, in accordance with Article 6 of its Founding Regulation, is tasked with “facilitating and rendering more effective the application of existing and future EU measures relating to the management of the external borders in the context of European integrated border management”. As the agency points out, it “is conscious of the fact that the fulfilment of certain law enforcement tasks mandated by the EU legislature may entail an

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<sup>16</sup> See also Art. 263 (1) and (4), Art. 265, Art. 267 (1) lit b) and Art. 325 of the TFEU.

<sup>17</sup> In addition, a reply was received from the EURATOM supply agency, stating that ‘in the field of fundamental rights, it does not have its own policy, but is covered by the policies of DG ENER and the European Commission’. The agency therefore did not reply to the questionnaire and thus it is not included in the figures under Section 1.4.

<sup>18</sup> In addition to FRA, the following make up the nine Justice and Home Affairs (JHA) agencies: the European Asylum Support Office (EASO), the European Agency for the operational management of large-scale IT Systems in the area of freedom, security and justice (EU-LISA), the European Institute for Gender Equality (EIGE), the European Border and Coast Guard Agency (Frontex), the European Union Agency for Law Enforcement Cooperation (Europol), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the European Union Agency for Law Enforcement Training (CEPOL), and the European Union Judicial Cooperation Unit (Eurojust).

encroachment on fundamental rights” and thus, it notes, “[t]he protection of fundamental rights permeates all areas of activity of Frontex”. Similarly, Europol points out that its Founding Regulation and its mandate “is directly linked to the EU Charter of Fundamental Rights. Europol’s core business to support EU Member States in preventing and combating all forms of serious crime and terrorism contributes to improve security for people living in the EU and thus also to protect their rights.” The results of FRA’s consultation shows that the Charter awareness of these agencies tends to be especially high.

Third, there are agencies whose mandate is of a more technical nature. This does not mean that their operations are of no relevance to the implementation of the Charter. For instance, the mandate of the European Chemicals Agency (ECHA) relates to the safe use of chemicals. In its response, ECHA noted: “[t]he sound management of hazardous substances contributes to overall environmental protection, which in turn avoids serious effects on the right to life, the right to the integrity of the person, the right to fair and just working conditions and also the right to environmental protection”. Despite all this, fundamental rights appear rather absent from a key document for agencies – their founding regulation (or decision). As can be seen in Table 1, only 15 of the 42 preambles mention fundamental rights, and only 4 out of 42 legal instruments refer to fundamental rights in the operative part of the founding regulation (or its equivalent).

**Table 1: Founding regulations (decisions) of EU agencies (bodies) and references to fundamental rights**

Agency/Body	Regulation (or equivalent) date	Preamble	Operative part
Adopted/revised before 1 December 2000			
CEDEFOP	10 February 1975		
EUROFOUND	26 May 1975		
EUIPO	20 December 1993		
EU-OSHA	18 July 1994		
CPVO	27 July 1994		
CDT	28 November 1994		
Adopted/revised after 1 December 2000 (proclamation of the Charter) and before 1 December 2009 (entry into force of the Charter)			
EFSA	28 January 2002		
EUROJUST	28 February 2002	✓	
EMSA	27 June 2002		
ENISA	10 March 2004		
EMA	31 March 2004		
ECDC	21 April 2004		
ERA	29 April 2004		
EFCA	26 April 2005		
EMCDDA	12 December 2006	✓	



ECHA	18 December 2006	✓	
EIGE	20 December 2006	✓	✓ <sup>19</sup>
FRA	15 February 2007	✓	✓ <sup>20</sup>
EIT	11 March 2008		
ETF	16 December 2008	✓	
EUROPOL	6 April 2009	✓	
EEA	23 April 2009		
BEREC	25 November 2009		
Adopted/revised after 1 December 2009			
EASO	19 May 2010	✓	
GSA	22 September 2010		
EIOPA	24 November 2010		
ESMA	24 November 2010		
EBA	24 November 2010		
ACER	25 October 2011	✓	
EU-LISA	25 October 2011	✓	
ERCEA	17 December 2013		
EACEA	18 December 2013		
INEA	23 December 2013		
SRB	15 July 2014	✓	
CEPOL	25 November 2015	✓	
FRONTEX	14 September 2016	✓	✓ <sup>21</sup>

<sup>19</sup> Regulation (EC) No. 1922/2006 of the European Parliament and of the Council of 20 December 2006 on establishing a European Institute for Gender Equality, Article 10.

<sup>20</sup> Council regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, Art. 2, 4, 5, 8, 10, 12, 15, 28 and 30. Whereas the Charter is not mentioned in the operational text of the founding regulation, the agency's mandate is of obvious relevance to the implementation of the Charter. In 2009 the European Parliament welcomed the setting-up of the Agency as a first step towards meeting Parliament's calls for the establishment of an integrated regulatory and institutional framework designed to put the Charter into effect. See Toggenburg G.N. (2018), The European Union Fundamental Rights Agency, in Gerd Oberleitner (ed.), International Human Rights Institutions, Tribunals, and Courts, Springer, Singapore.

<sup>21</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No. 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No. 2007/2004 and Council Decision 2005/267/EC, Art. 1, 6, 12, 16, 18, 21, 22, 25, 26, 27, 28, 29, 34, 35, 36, 40, 52, 54, 55, 61, 62, 68, 70, 71 and 72.

EPP0	12 October 2017	✓	✓ <sup>22</sup>
EASA	4 July 2018	✓	
<i>Joint undertakings:</i>			
Adopted/revised after 1 December 2000 and before 1 December 2009			
SESAR JU	27 February 2007		
Adopted/revised after 1 December 2009			
ESCEL JU	6 May 2014		
CS2 JU	6 May 2014		
BBJ JU	6 May 2014		

Source: FRA, 2018

In addition to the differences discussed above, it is also important to stress the different legal nature of the agencies and other bodies consulted by AFCO. Some are executive agencies, others regulatory agencies with the executive agencies forming an *integral part* of the European Commission (see Annex 1). The executive agencies are not part of the "Agencies network". The different nature of the respondents should be taken into consideration when looking at the replies of the agencies and other bodies to the questionnaire.

### 1.3. Agencies: internal and external protection mechanisms and policies

A distinction can be drawn between mechanisms and policies that exist to safeguard fundamental rights within agencies (internal mechanisms) and those that exist to ensure that agencies do not violate fundamental rights vis-à-vis third parties (external mechanisms). The agencies frequently drew this internal/external distinction in their responses, and emphasised the importance of the Charter in both aspects of their work. As CEPOL pointed out, for example, "[t]he EU Charter of Fundamental Rights has a twofold role in CEPOL's work. First, it concerns staff at a [personnel] level. [...] Second, the promotion of fundamental rights in law enforcement is foreseen in CEPOL's mandate, which is to provide training for law enforcement officials, namely police officers, judges and prosecutors." In the following, examples of available mechanisms and policies are given. Examples provided can be shared by (many) other agencies even if this is not mentioned.<sup>23</sup>

#### Internal protection of fundamental rights

Agency compliance with and promotion of fundamental rights has to start within the agencies themselves. No matter what their activities entail, all agencies will encounter fundamental rights issues in their internal operations, in particular as they relate to the rights of staff and potential staff members. A range of policies have been developed to ensure fundamental rights are protected within the agencies, as is evident from the responses received. The origin of such policies is mostly in the EU's staff regulations (e.g. in the context of social security benefits or the right to information, etc.) and in other regulations that apply to the EU as a whole (such as, for instance, in the areas of data protection or access to documents), and therefore also to the agencies.

<sup>22</sup> Council regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPP0'), Art. 32, 58, 60, 61, 83, 84 and 85.

<sup>23</sup> For instance, ECHA has – like EASA – a code of conduct for staff, MB and BoA, and they have a Board of Appeal as mentioned for EASA.

Nonetheless, agencies have also adopted various agency-specific measures. Some examples are by way of illustration highlighted below.

- *Freedom of expression (Article 11 of the Charter)*. This issue is governed by Staff Regulation Article 17a, 'Freedom of expression'. A number of agencies have put in place more detailed regulation of such issues. For example, the European Medicines Agency (EMA) has in place a policy on publications by staff that references the Charter of Fundamental Rights, 10 June 2008, which refers to open publication so that access is readily available to research funded by EMA as a public body.
- *Equality between men and women (Article 23 of the Charter)*. Agencies have instituted specific policies in the area of equality between men and women. For instance, the European Research Council (ERC) Scientific Council established a Working Group on Gender Balance to counteract gender bias in peer review.
- *Integration of people with disabilities (Article 26 of the Charter)*. Article 1(d) of the Staff Regulations prohibits any discrimination based on any grounds, including disability. The European Research Council Executive Agency (ERCEA) notes that experts are recruited without any reference to disabilities and measures to facilitate their work are taken.
- *Fair and just working conditions (Article 31 of the Charter)*. Agencies have also instituted specific policies to protect the right to fair and just working conditions. For example, the CPVO points to tailor-made internal instruments such as 'the AC Rules on Good Administrative Behaviour', 'the Internal Communication Guidelines', and 'the Health and Wellbeing Policy' as well as its 'Policy on protecting the dignity of the person and preventing psychological and sexual harassment' (Articles 1 and 4 of the Charter). In addition, agencies also have in place a system of confidential counsellors, in order to, as pointed out in the EU-OSHA response, "provide staff with an objective and trusted place to turn to in cases of harassment or other forms of inappropriate behavior at work."
- *Environmental protection (Article 37 of the Charter)*. Agencies and joint undertakings have instituted a range of policies to implement this right internally. For example, the Electronic Components and Systems for European Leadership Joint Undertaking (ECSEL JU) has a policy of no individual printers, limited use of paper (paperless procedures are in the test phase) and of plastics. It also notes that energy efficiency is encouraged via all means.
- *Right to refer to the European Ombudsman (Article 43 of the Charter)*. Agencies have instituted several policies to remind individuals of this right. For instance, EIOPA points out that it explicitly reminds people of this right on several occasions, such as in vacancy notices and other calls for expression of interest, in its whistleblowing policy, as well as in its Code of Good Administrative Behaviour.

### **External protection of fundamental rights: general measures**

Agencies are also required to respect the Charter in their operational activities. For this purpose, many fundamental rights-protection policies and mechanisms have been put in place at the agency level to ensure that they respect fundamental rights vis-à-vis external rights-holders. Examples include the following:

- *Appointment of official(s) within the agency responsible for fundamental rights.*

Article 71 of the Frontex Founding Regulation provides for a Fundamental Rights Officer, appointed by the Management Board; this person is independent in the performance of his or her duties and contributes to the agency's fundamental rights strategy, monitors its compliance with fundamental rights and promotes its respect. CEPOL ensures that all the training pertaining to fundamental rights is coordinated by a single contact point. With the adoption of the new EU Asylum Agency (EUAA), the prospective successor to EASO, this agency too will establish a Fundamental Rights Officer; it will further help to mainstream fundamental rights in all its activities and thus strengthen its role in promoting the Charter when working with its stakeholders. EASO noted in its response, "[i]t will be a powerful mechanism to streamline further fundamental rights across the agency building on the extensive work already done."

- *Adoption of a fundamental rights strategy.*

Article 34 of Frontex's Founding Regulation requires the agency to draw up, further develop and implement a Fundamental Rights Strategy in order to guarantee the protection of fundamental rights in the performance of its tasks. Similarly, the proposed European Asylum Support Office (EUAA) Regulation will require the agency to adopt a fundamental rights strategy to monitor and ensure their protection.

- *Creation of a fundamental rights complaints mechanism.*

Article 72 of the Frontex Founding Regulation requires the agency, in cooperation with the Fundamental Rights Officer, to take the necessary measures to set up a complaints mechanism to monitor and ensure respect for fundamental rights in all the activities of the agency. Any person who is directly affected by the actions of staff involved in the activities of the agency and who considers him or herself to have been the subject of a breach of his or her fundamental rights due to those actions, or any party representing such a person, may submit a complaint in writing.

- *Creation of a consultative forum focusing on fundamental rights matters.*

Article 70 of Frontex's Founding Regulation establishes a Consultative Forum to assist the Executive Director and the Management Board with independent advice in fundamental rights matters.

- *Adoption of fundamental rights codes of conduct in operational activities.*

Article 35 of the Frontex Founding Regulation requires drawing up codes of conduct for (i) all persons participating in Frontex operational activities and (ii) persons participating in return operations.

- *Policies to withdraw financing or suspension/termination of operations in case of fundamental rights violations.*

At Frontex, the powers of the Executive Director in case that fundamental rights are not respected in operations (Article 25, Founding Regulation) include the power to withdraw financing, suspend or terminate activities of the agency.

- *Training of staff on fundamental rights matters in operations.*

Training on fundamental rights to border guards and return personnel is provided for in Article 36 of the Frontex Founding Regulation, which requires the agency to ensure that its staff and all staff who participate in return operations and in return interventions have received training in relevant EU and international law, including on

fundamental rights and access to international protection, prior to their participation in operational activities organised by the agency.

- *Inclusion of fundamental rights in operational planning.*

Frontex's Operational Plan (Article 16 of the Founding Regulation) also includes fundamental rights considerations. As Frontex points out, the protection of fundamental rights is central, "as it contains inter alia procedures aimed at (i) protecting persons in need of international protection, victims of trafficking in human beings, unaccompanied minors and persons in a vulnerable situation and (ii) allowing to report to Agency breaches of fundamental rights."

### **External protection of fundamental rights: measures aimed at protecting particular fundamental rights**

Agencies also reported on a number of measures taken to protect specific Charter rights in their operations. Examples include:

- *Right to education (Article 14 of the Charter).*

The ETF contributes, in the context of EU external relations policies, to human capital development, defined as work that contributes to the lifelong development of individuals' skills and competences through the improvement of vocational education and training systems. In this context, the work of the ETF is relevant to the protection and promotion of fundamental rights in countries that are not bound by the Charter.

- *Protection of the right to property (Article 17 of the Charter).*

In the performance of its tasks, the Single Resolution Board (SRB), which deals with the orderly resolution of failing banks, noted that its legal framework "provides specific safeguards for the protection of the right to property [...] which ensures that no creditors are treated less favourably in resolution than they would be treated in insolvency. In such a case, the legal framework provides for a specific right to compensation from the Single Resolution Fund."

- *Linguistic diversity (Article 22 of the Charter).*

A number of agencies have put in place policies to respect linguistic diversity. For example, EU-OSHA referred to its [award-winning multilingual website](#) (25 languages).

- *Environmental protection (Article 37 of the Charter).*

Agencies have also put in place measures vis-à-vis third parties to ensure environmental protection in line with their obligations in this area. For example, the European Centre for Disease Prevention and Control (ECDC) notes that it "requires compliance with environmental standards from its contractors. Thus, services provided to the agency must align with those and the principle of sustainable development. Recent examples of this include requirements for the procurements for the new building premises and ICT outsourcing."

- *Right to good administration (Article 41 of the Charter).*

The European Aviation Safety Agency (EASA) has put in place a comprehensive set of measures to implement the right to good administration, reflected in particular in the Code of Conduct for the staff of EASA. Similar codes were established for the EASA Board of Appeal and for the EASA Management Board as well as for external experts.

- *Right to an effective remedy (Article 47 of the Charter).*

A distinction may be drawn between agencies that take binding decisions vis-à-vis third parties and those that do not. In addition to the ability to go to the CJEU, appeals procedures have been put in place in a number of such agencies to enhance respect for the right to an effective remedy. For example, EASA has established a Board of Appeal to decide on appeals brought against EASA decisions and adopted dedicated policies and procedures in this respect.

#### 1.4. Agencies and fundamental rights: the way forward

The examples above show that a variety of practices are available across the many agencies – a diversity that would call for the exchange of both promising practices and challenges in better implementing and promoting the Charter in general as well as its individual rights.

Reinforced inter-agency cooperation in this regard could build on some existing experiences. Agencies have signed memoranda of understanding<sup>24</sup> and there are relevant networks<sup>25</sup> that allow for exchange amongst agencies. Agencies have also issued some joint statements relevant to fundamental rights.<sup>26</sup> To further develop a ‘Charter-culture’ across all agencies, such practices could be further extended.

A 2016 study commissioned by the European Parliament reached the following conclusions:

- The comparison between Frontex and the European Asylum Support Office (EASO) illustrates that EU agencies have widely diverging practices as regards whether, and how, to integrate the Charter in their working methods. There is considerable room for progress through collective learning across agencies.
- All EU agencies could consider: (i) adopting a fundamental rights strategy; (ii) including a reference to fundamental rights in a code of conduct that could define the duties of their staff; (iii) setting up mechanisms ensuring that any violation of fundamental rights be detected and reported, and that risks of such violations be swiftly brought to the attention of the main bodies of the agency; (iv) establishing the position of a fundamental rights officer, reporting directly to the management board to ensure a certain degree of independence vis-à-vis other staff, in order to ensure that threats to fundamental rights shall be immediately addressed, and a constant upgrading of the fundamental rights policy within the organization; (v) developing a regular dialogue with civil society organisations and relevant international organizations on fundamental rights issues; and finally, but perhaps most importantly, (vi) making compliance with fundamental rights a central component of the terms of reference of the collaboration of the agency

<sup>24</sup> For example, Eurojust concluded a Memorandum of Understanding with the Fundamental Rights Agency on 3 November 2014 in order to enhance cooperation, consult and inform each other on issues of common interest and exchange strategic and technical information.

<sup>25</sup> The Justice and Home Affairs agencies’ network (JHA network) was established in 2006 to increase cooperation and synergies in areas of common interest, such as operational work, training and external relations. It is composed of nine agencies (see Footnote 18). The agencies work together on a wide range of issues and play an advisory, operational and coordination role in implementing EU priorities in the area of freedom, security and justice.

<sup>26</sup> See the EU agencies’ [joint statement pledging to strengthen fundamental rights protection](#) of 20 February 2015, or the common [declaration against sexual harassment in the workplace on the occasion of International Women’s Day](#) of 8 March 2018. Note that, on 13 June 2018, 10 EU agencies renewed their [commitment to fight trafficking in human beings](#).

concerned with external actors, including in particular members of national administrations with whom they interact at operational level.<sup>27</sup>

This section looks at the views of the agencies on such policy proposals.

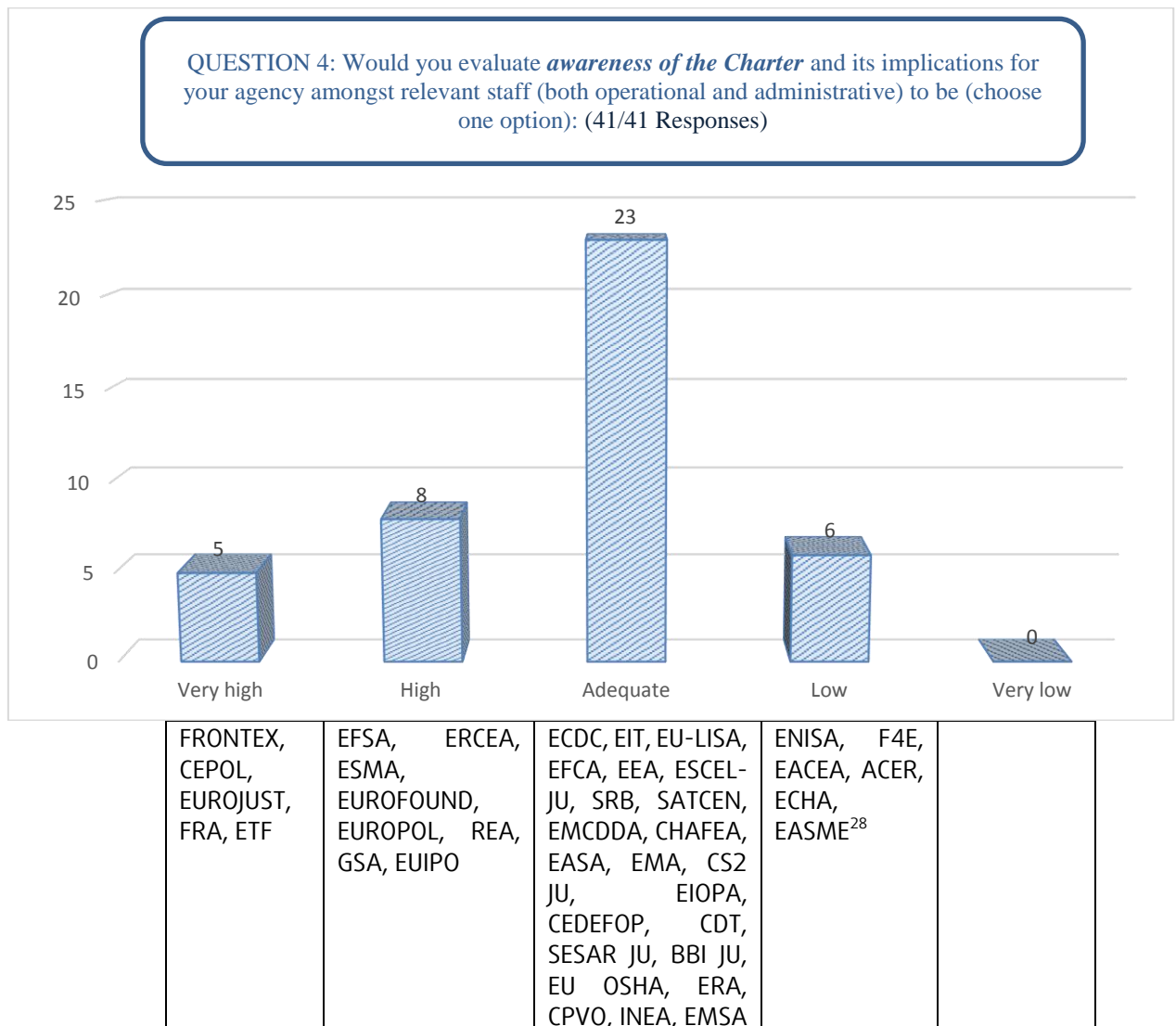
Regarding the agencies' own perceptions of their staff's awareness of the Charter, the agencies felt that this awareness was adequate – but in some cases, it was also considered low (figure 1). Agencies operating in fundamental-rights sensitive areas tended to indicate a higher level of awareness of (the Charter of) fundamental rights. For example, all three agencies that responded that awareness was 'very high' operate in 'fundamental-rights sensitive' areas such as justice and home affairs, and agencies/joint undertakings responding that awareness was low tended to operate in more technical spheres, such as information security (ENISA), fusion energy (F4E) and energy regulation (ACER). Agencies that operate in the sphere of fundamental rights all reported that awareness of the Charter amongst relevant staff was at least adequate. Overall, the vast majority of agencies responding to the questionnaire felt that their staff were at least sufficiently aware of the Charter. . It should be noted, as indeed some agencies remarked, that the above is not based on detailed questionnaires of their own staff, but on the perceptions of those filling out the questionnaire.

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<sup>27</sup> De Schutter, O. (2016), [\*Implementation of the EU Charter of Fundamental Rights in the EU institutional framework\*](#), Study for the AFCC Committee, p. 42.



**Figure 1: Awareness of the Charter in EU agencies**



Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

### Potential fundamental rights policies within the agencies

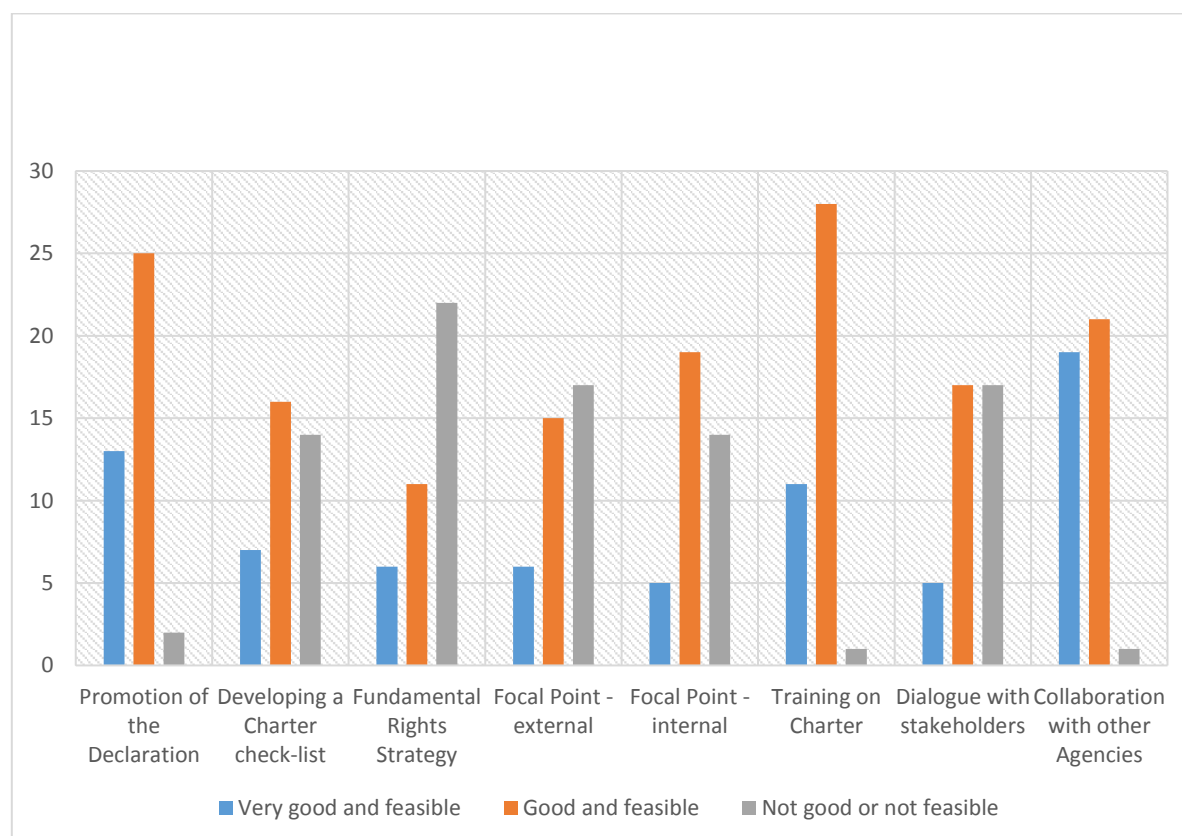
The questionnaire sent to the agencies confronted them with a range of policy options, and asked them whether they saw these actions as relevant and/or useful to their work. Many agencies felt there was a need for action to improve the situation. The questionnaire asked agencies to consider certain policy options. Figure 2 shows the overall results. Figures 2-10 show how the different agencies replied to the different specific proposals. These ranged from training (Figure 3), increased collaboration with other agencies (Figure 4), development and application of a Charter checklist (Figure 5), designation of Charter focal points for external affairs (Figure 6) or for internal

<sup>28</sup> EASME conducted a survey of its staff, with 40 out of 96 replying that they felt awareness was low; 17 indicating very low; 27 adequate, 10 high and two very high. Replies of other agencies were not based on such surveys, but on the perceptions of those filling out the questionnaire.



affairs (Figure 7), development of a dialogue with relevant fundamental rights stakeholders such as NHRIs etc (Figure 8), promotion of the joint agencies' statement 'Strengthen fundamental rights' protection' (Figure 9),<sup>29</sup> and adoption of a fundamental rights strategy (Figure 10). Agencies were also offered the opportunity to elaborate on their answers.

**Figure 2: Acceptance of different ways to promote fundamental rights**



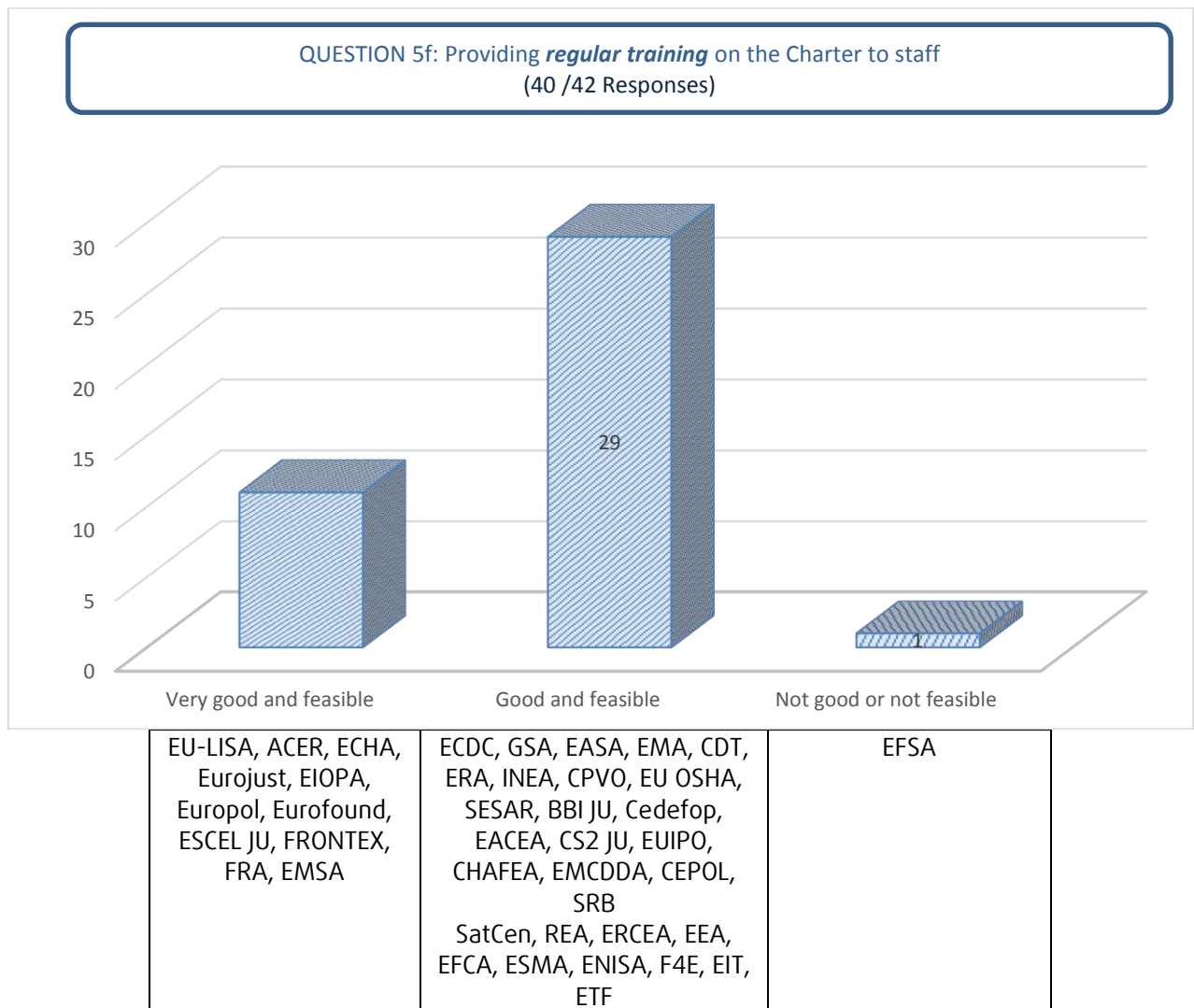
*Note:* Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

Looking at each of the specific policies, agencies generally felt very strongly about the utility of more training on the Charter for their staff (see Figure 3). It was suggested that it would be effective to give training on "concrete aspects" of the functioning of the relevant agency (EFSA) and link them to the Charter, rather than a general theoretical training on the Charter. Other agencies (EU-LISA) noted that "it is of utmost importance to make sure that all employees in the Agency, including the Management Team, should receive regular trainings on the subject of fundamental rights". Some agencies suggested co-operation with FRA (Eurojust), while others (e.g. the Innovation and Networks Executive Agency, INEA) felt that such training should take place at the central level by the Commission, or between executive agencies (e.g. the Education, Culture and Audiovisual Executive Agency, EACEA).

<sup>29</sup> FRA (2015), [Strengthen fundamental rights' protection: All EU Agencies sign joint statement](#), News release, 24 February 2015.

**Figure 3: Acceptance of different ways to promote fundamental rights: training**



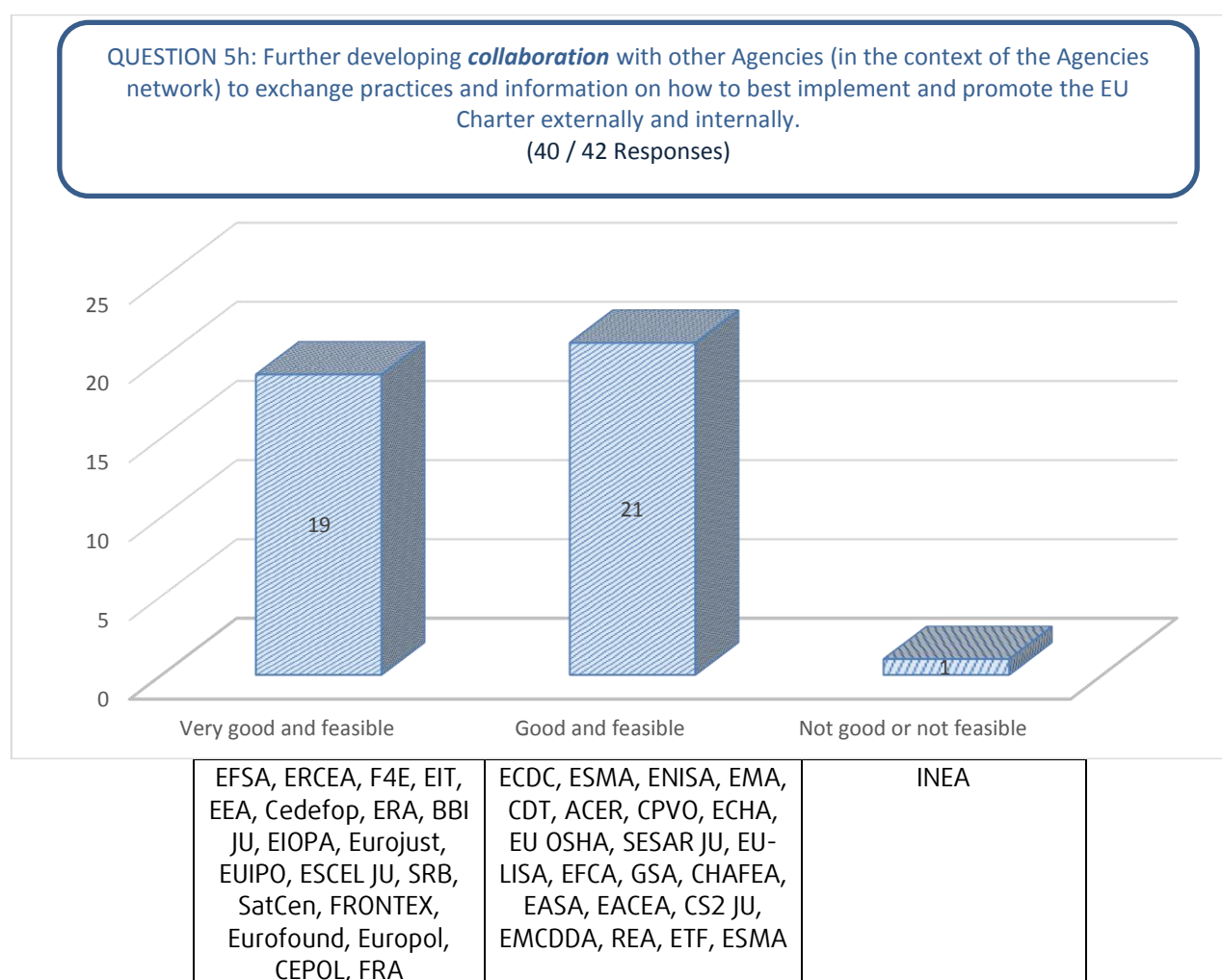
*Notes: For the agencies' full names, see the list of acronyms.*

*Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.*

*Source: FRA, 2018*

There also appears to be considerable enthusiasm about deepening existing collaboration with other agencies (see Figure 4). It was noted that “[t]his cooperation could be channelled through the JHA Network where Agencies working in a common area may be better positioned to exchange best practices and information” (Eurojust response) – a view echoed by a number of other agencies (e.g. the Bio-based Industries Joint Undertaking BBI-JU, EUIPO, ECSEL JU). Informal networks (EU-OSHA) and the agencies’ [website](#) (EUIPO) were also referred to. Several agencies also saw a role for FRA in facilitating these activities (ECHA, European Food Safety Authority (EFSA)).

**Figure 4: Acceptance of different ways to promote fundamental rights: collaboration**



Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

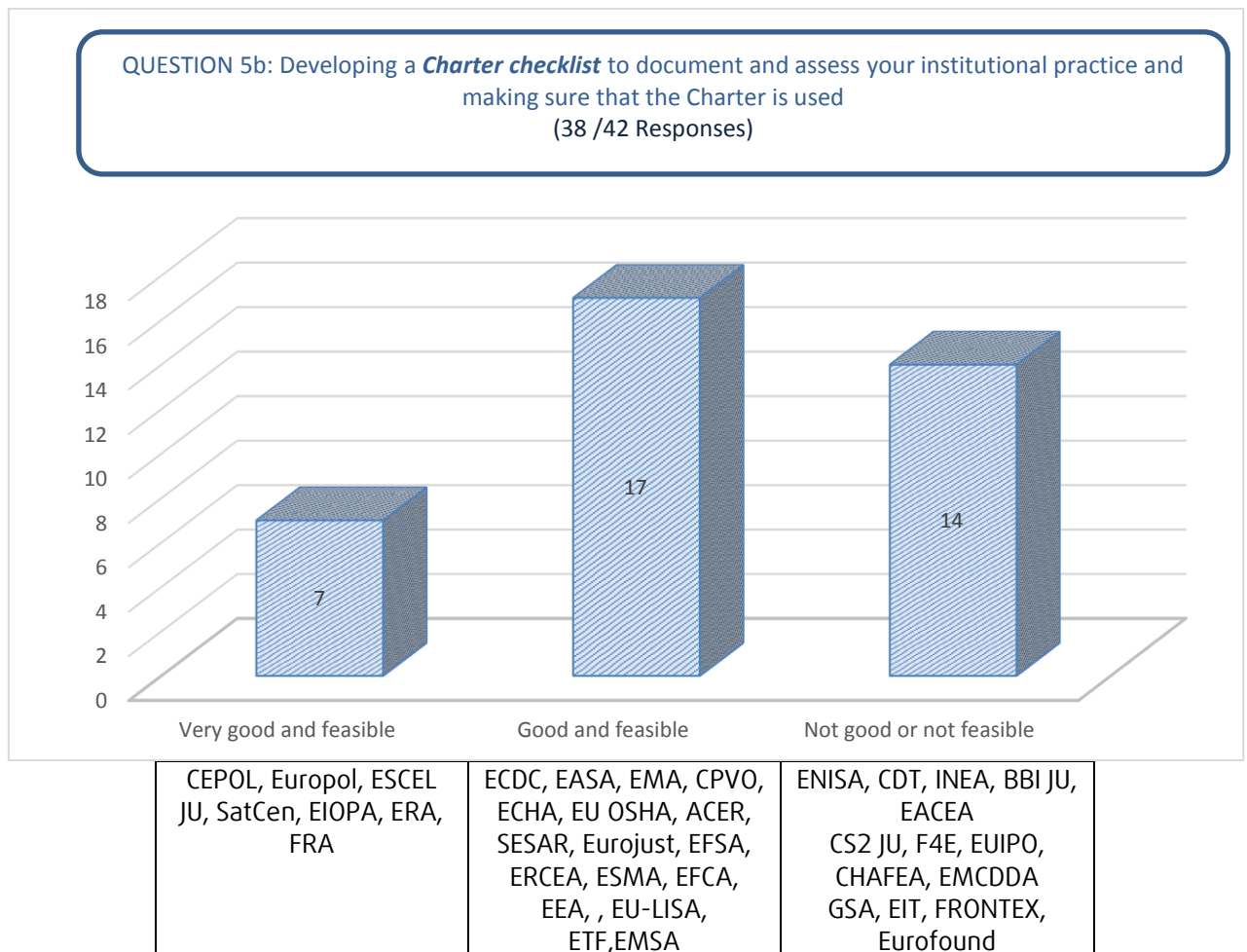
Source: FRA, 2018

Views on developing a Charter-checklist diverged (see Figure 5). Some agencies warned that this would be an additional administrative burden (F4E, the European Global Navigation Satellite Systems Agency (GSA)). Others noted that it would be potentially useful. Eurojust noted that it was working on establishing such a checklist. Europol pointed out that "[t]he Charter of Fundamental Rights of the European Union is a key source of Europol's Ethics framework that is maintained across the organisation on a continuous basis, including regular oversight by the Executive Director and the Directorate of Europol as a whole who are supported by the independent functions of Europol (Data Protection officer, Internal Audit Capability – IAC) in that context. Against this background, a check-list at Europol is not considered necessary for the time being."

ECHA took the view that "[t]his would need to be an adaptable check-list, i.e. different based on each agency's mandate. It could be divided in two parts, one related to the mandate of agencies and the other related to general aspects flowing from the Charter, such as good administrative behaviour, access to documents, non-

discrimination, anti-harassment". EU-OSHA pointed out that "[w]hile a checklist is a good idea, there may be some difficulty in ensuring that the checklist is specific enough to be useful, while being applicable to all Agencies." Frontex noted that such a checklist would need to be continuously updated as the Charter is a living instrument.

**Figure 5: Acceptance of different ways to promote fundamental rights: checklists**



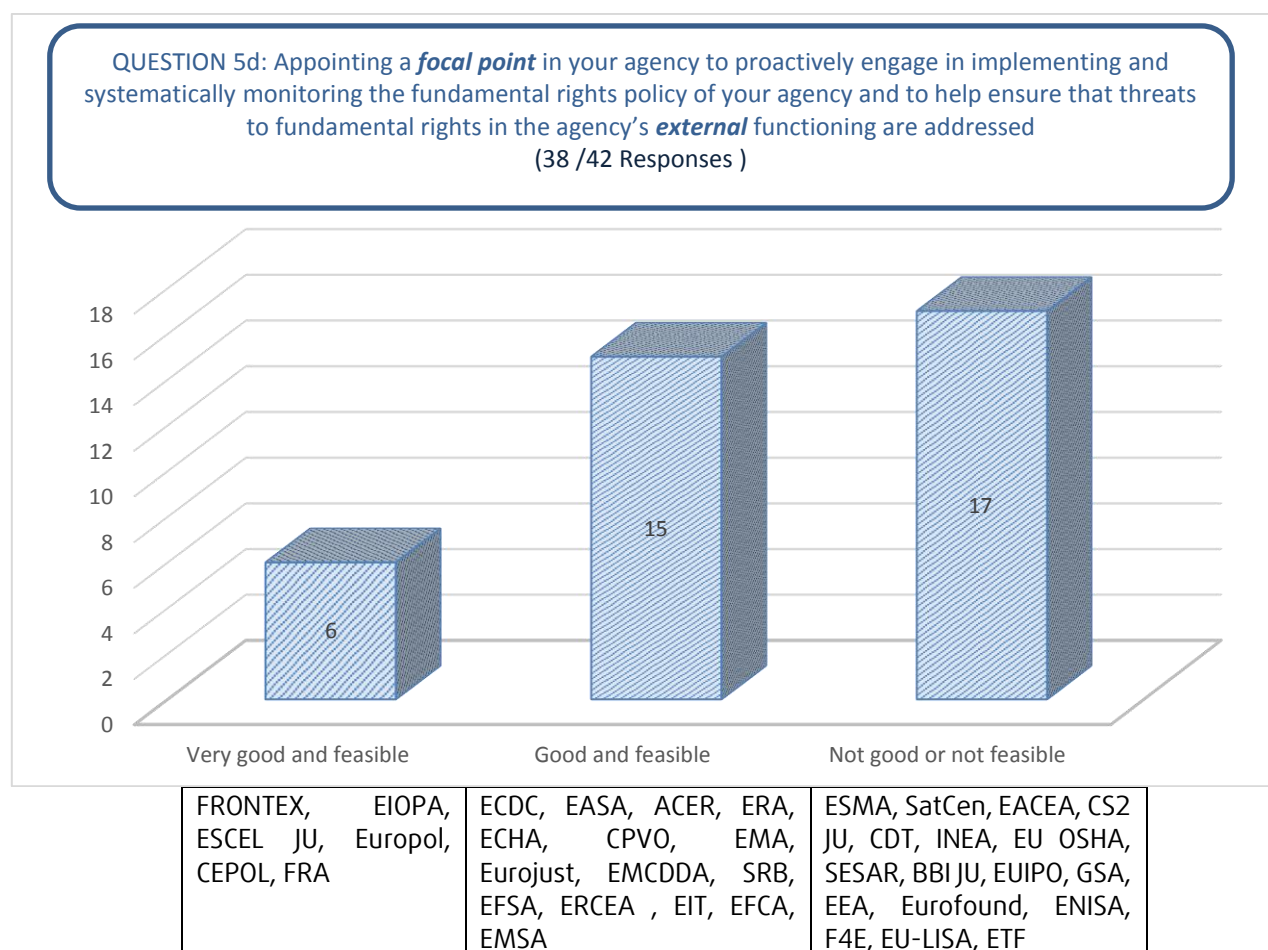
Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

Opinions were also divided on the creation of external and/or internal focal points on fundamental rights within agencies (see Figures 6 and 7). This appears to have to do with the fact that some agencies already have such a mechanism (e.g. Frontex). Other agencies argued that it would add an extra layer of administration (the European Securities and Markets Authority (ESMA)) or that it would be difficult to put in place in small agencies (SESAR). Another comment was that a focal point could be useful "primarily for participating in relevant inter-institutional exchanges and coordinating the related information flow".

**Figure 6: Acceptance of different ways to promote fundamental rights: focal points (external)**

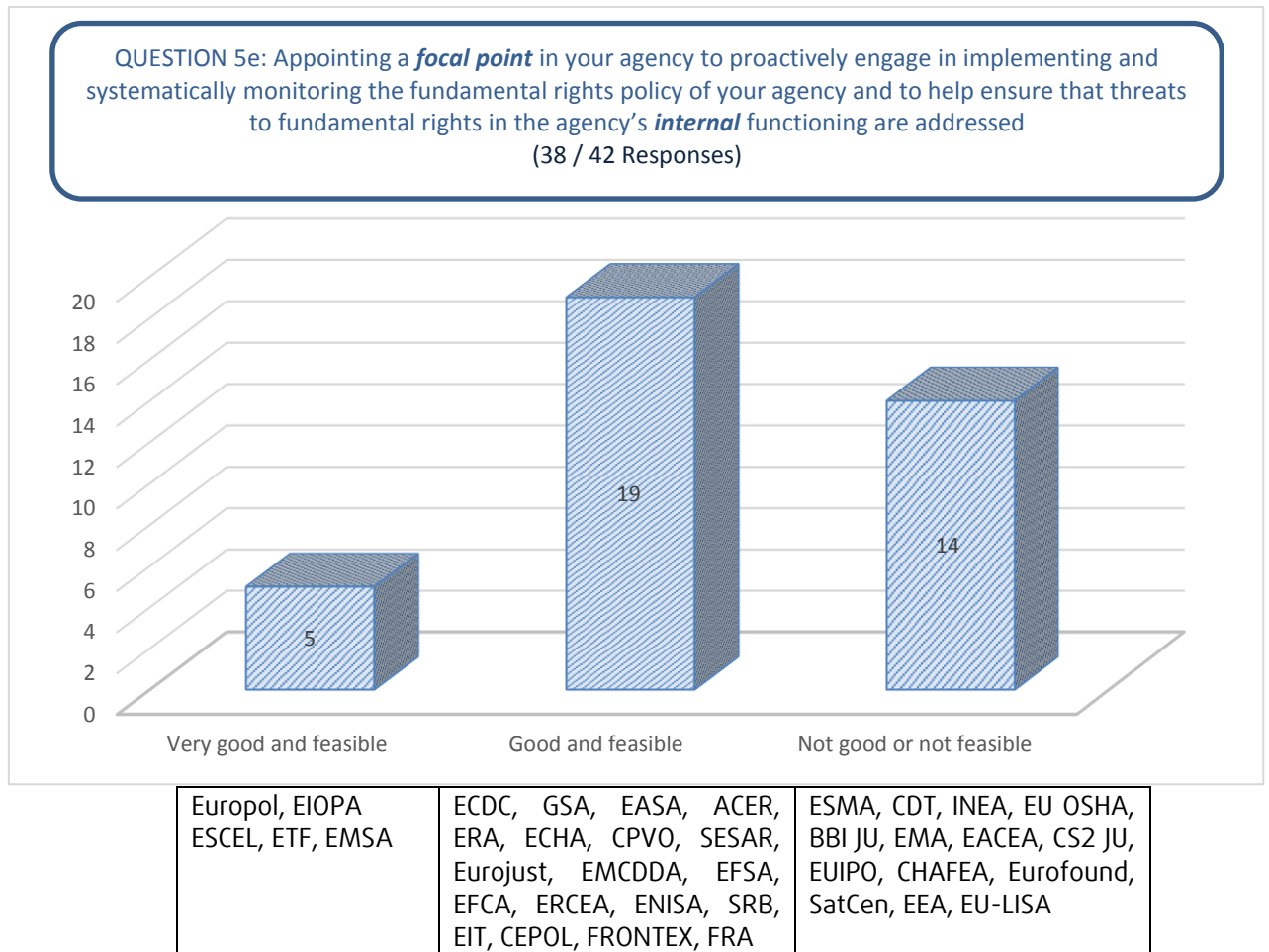


Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

**Figure 7: Acceptance of different ways to promote fundamental rights: focal points (internal)**



Notes: For the agencies' full names, see the list of acronyms.

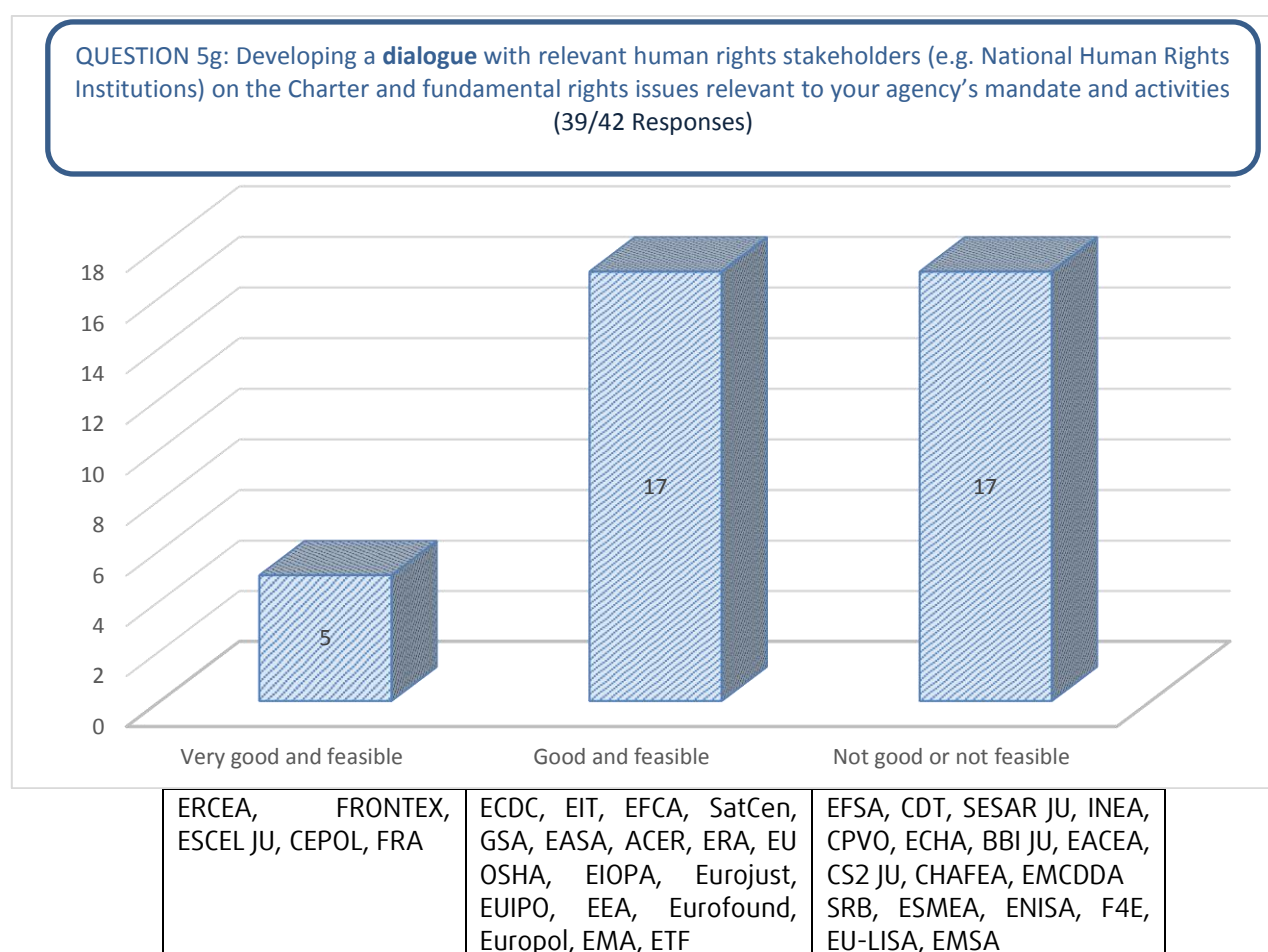
Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

Many respondents did not see deepening engagement with relevant stakeholders, though generally acknowledged as important, as a key area for further development (see Figure 8). From the explanations of responses, it appears that some agencies feel that they already engage extensively in such dialogues (e.g. Frontex through its Consultative Forum or EU-OSHA through its tripartite Governing Board representing Governments, Employers, and Workers). Others noted that specific fundamental rights stakeholder engagement would be very resource-intensive, and therefore difficult to carry out without additional resources (e.g. ECHA, EMCDDA). Other agencies thought it would not work due to the technical nature of their operations (EU-LISA) or felt that it was not particularly relevant to their mandate (e.g. BBI JU, EFSA, ESMA, ENISA). At the same time, some agencies noted that they would be open to the idea (Europol). Based on its mandate as an executive agency, the Single Resolution Board (SRB) suggested that "[i]n order to ensure alignment with the European Commission and consistency among the various agencies, it would be advisable to develop a coordinated dialogue with relevant human rights stakeholders in a centralised manner".



**Figure 8: Acceptance of different ways to promote fundamental rights: dialogue with stakeholders**



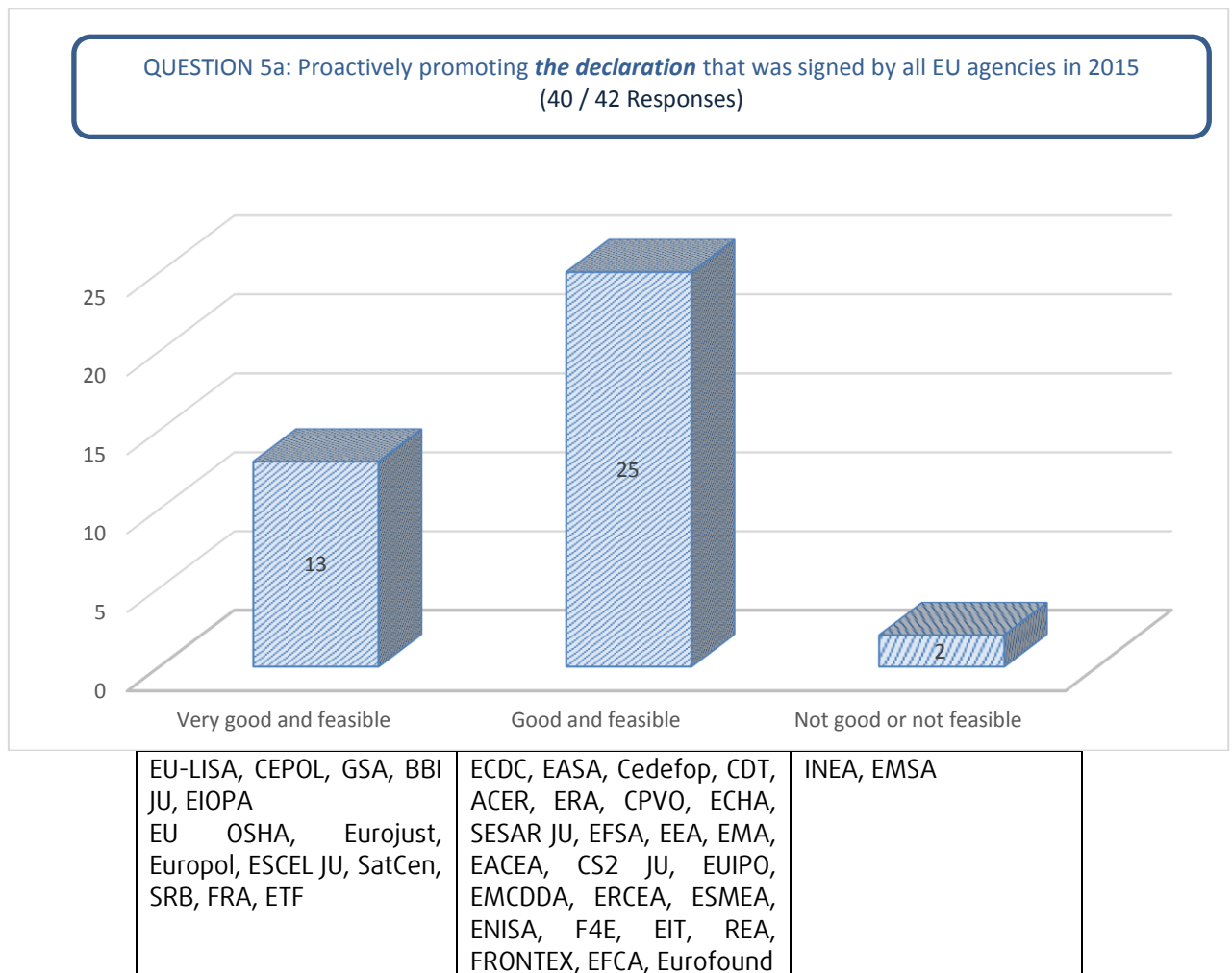
Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

There was considerable enthusiasm for further promoting the declaration signed on fundamental rights issues by all agencies in 2015: the vast majority of agencies considered this to be either very good, or good and feasible. EFSA noted that "a proactive promotion of the declaration that was signed by all EU agencies in 2015 is desirable to allow staff members to know the fundamental rights context behind EU activities. As fundamental rights are included in the EFSA legal and policy documents, it is therefore extremely important that staff members are aware of the fundamental rights on which EFSA documents are based". CEPOL argued that "[i]n the context of our learning and training activities as well as in our training material on fundamental rights issues, the declaration will be a basis for any content and thus awareness of law enforcement officers can be raised". EIOPA pointed out that the declaration "will be communicated to the staff during HR induction sessions and will be published on EIOPA's intranet". SESAR suggested inserting the Charter and declaration in the Welcome Pack for newcomers. ECSEL JU proposed that a short video could also help.

**Figure 9: Acceptance of different ways to promote fundamental rights: declarations**



Notes: For the agencies' full names, see the list of acronyms.

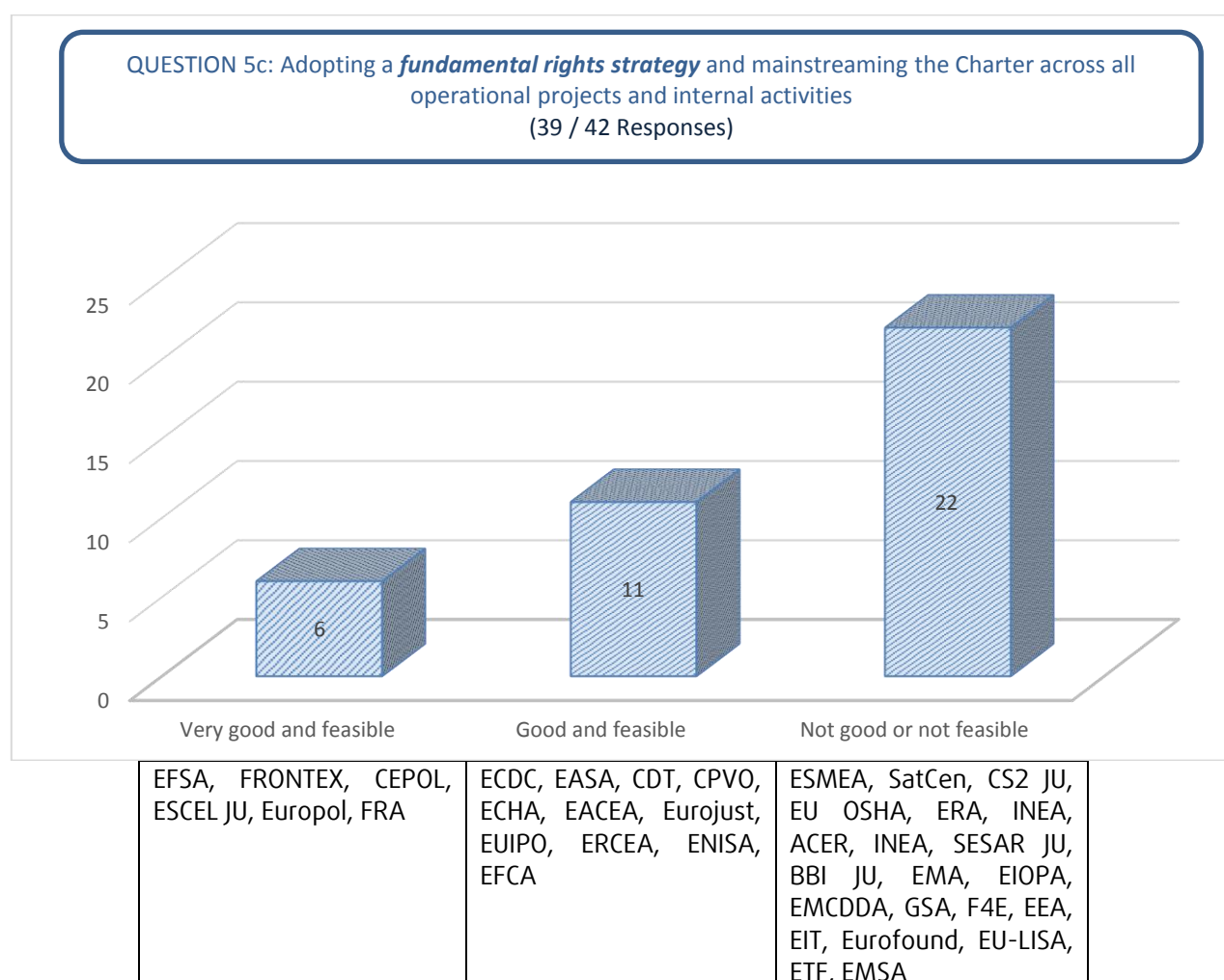
Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

Finally, adopting a fundamental rights strategy was seen by most agencies to be less feasible or useful (Figure 10). A number of agencies noted they did not see much added value (INEA, the Single European Sky ATM Research Joint Undertaking (SESAR JU), ERCEA, EMA) or that this was already covered by their operational planning (e.g. Europol) or founding regulation (Frontex). EFSA noted that "a fundamental rights assessment has already been performed by Legal Affairs Unit when adopting specific measures, for instance when organizing the training of Ethics Adviser". ECHA suggested that "it might be worth exploring whether, instead of a separate strategy document, the annual and multi-annual work plans of the agencies could contain a section on the strategy. These work plans are also adopted in most cases by the Management Boards, therefore they would be no less binding than a separate strategy document adopted by the MB. Similarly, instead of the planning phase, a retrospective approach might be taken, i.e. including steps taken by the agency to mainstream the Charter could be reported in each agency's annual/general report".



**Figure 10: Acceptance of different ways to promote fundamental rights: strategy**



Notes: For the agencies' full names, see the list of acronyms.

Reflects the results of a consultation with EU agencies based on a questionnaire, which 50 agencies and joint undertakings received and to which 42 responded.

Source: FRA, 2018

## FRA Opinion 2: The Charter's relevance for EU agencies

All EU agencies are bound by the Charter of Fundamental Rights. FRA consulted all EU agencies; this revealed that the majority view their mandates as having some relevance to the implementation of the Charter. The agencies provided a rich spectrum of examples in this regard. However, their founding documents – many adopted before the Charter entered into force – hardly refer to the Charter or to fundamental rights more generally. Only very few contain specific fundamental rights-protection mechanisms. Moreover, when consulted on various concrete proposals to increase the Charter's presence in their internal and external work, the agencies' comments partly conveyed a certain skepticism. (The proposals ranged from soft forms of cooperation to more operational proposals, such as establishing focal points.) At the same time, some of the proposals were very well received by the agencies – such as the proposal to expand available training on fundamental rights.

**As a reminder of agencies and other bodies' legal obligations under the Charter, the EU legislator should insert a reference to fundamental rights whenever drafting or**

*revising regulations or decisions setting up such agencies or bodies. Such an explicit reference in the agencies' founding documents would increase awareness of the Charter and of the agencies' means to promote Charter rights within their respective mandates. In addition, the EU legislator should carefully consider introducing, on a case-by-case basis, more operational mechanisms for the protection and promotion of fundamental rights – such as Charter focal points and fundamental rights officers.*

*The EU agencies should regularly exchange experiences and practices with regard to implementing the Charter, including in the various agencies' networks. Such exchanges should concretely assess the possibility of taking steps to further the protection and promotion of fundamental rights within and outside of the agencies. Steps to consider include increasing fundamental rights-related training, collaborating with other agencies and stakeholders on fundamental rights and adopting relevant policy documents and mechanisms.*

## 2. National level: implementation of the Charter in national policies, legislative processes and case law

As mentioned, the Charter addresses and binds the “institutions, bodies and agencies of the Union”. It binds the Member States only “when they are implementing Union law” (Article 51 of the Charter). In contrast to the ECHR, the Charter’s scope of application is limited and not easy to delimitate.<sup>30</sup> To determine whether the Charter applies at national level, it is necessary to assess on a case-by-case whether or not the Member State is acting within the scope of EU law.

The academic discussion surrounding the often-heard assumption that 80% of national law is directly and indirectly influenced by EU legislation shows that it is impossible to precisely indicate in quantifiable terms how much of national law is ‘Europeanised’.<sup>31</sup> It is, however, common knowledge that significant parts of national law-making fall in areas that are (co-)defined by EU law. Against this background, one would assume that the Charter plays a visible and relevant role in national legal systems. The information collected for this Opinion does not match this expectation.

It is easy to study the Charter’s use at EU level – for instance, via the database Eur-Lex or the European Commission’s annual reports. It is far more difficult to track and analyse the decentralised use of the Charter in national parliamentary debates, impact assessments of bills, legislation and case law, as they unfold in the 28 different national systems. Academic literature on the Charter remains rich, but tends to focus on general aspects or the Charter’s overall scope and effect at national level – and not on its concrete use by Member State authorities.<sup>32</sup>

In any event, within the EU the protection of fundamental rights can only be realised – as the Council of the European Union rightly points out – “with the support and active cooperation of all stakeholders at EU as well as at national level”.<sup>33</sup> EU law is mainly implemented at national level, by national actors and not by the EU itself. This implies that the Charter and its implementation depends mainly on national-level actors. This turns national courts, legislators and administrations into vital ‘Charter agents’. The European Parliament has also acknowledged and stressed that “[n]ational authorities (judicial authorities, law enforcement bodies and administrations) are key actors in giving concrete effect to the rights and freedoms enshrined in the Charter”.<sup>34</sup>

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<sup>30</sup> Detailed guidance in this regard is provided for instance in the upcoming FRA handbook *Guidance on the application of the Charter of Fundamental Rights of the European Union in law and policymaking at national level*.

<sup>31</sup> See, for example, Töller, A. E. (2008), ‘Mythen und Methoden. Zur Messung der Europäisierung der Gesetzgebung des Deutschen Bundestages jenseits des 80-Prozent-Mythos’, *Zeitschrift für Parlamentsfragen*, Vol. 39, No. 1, pp. 3-17.

<sup>32</sup> There is, however, an increasing interest, especially with regard to the use of the Charter by national courts. See, for example, Burgorgue-Larsen, L. (2017), *La Charte des droits fondamentaux saisie par les juges en Europe*, Paris, Pedone; Ministry of Foreign Affairs of Poland (2016), *Application of the EU Charter of Fundamental Rights by Polish Courts*, Bilingual conference proceedings; or the upcoming conference on 22 and 23 March 2019 organised by the Bonavero Institute of Human Rights and the Mansfield College (University of Oxford) in cooperation with FRA.

<sup>33</sup> Council of the European Union (2017), [Conclusions on the application of the EU Charter of Fundamental Rights in 2016](#), adopted on 12 October 2017.

<sup>34</sup> European Parliament (2015), [Resolution of 8 September 2015 on the situation of fundamental rights in the European Union \(2013-2014\)](#) (2014/2254(INI)), Strasbourg, 8 September 2015, para. 20.

## 2.1. The Charter and governments: lack of policies promoting the Charter and need for more pro-active stance

According to Eurostat data, in 2012, 64% of the population across the EU had heard of the Charter. But only about one-sixth of them said they actually knew what it was.<sup>35</sup> This awareness-gap does not appear to be prominently addressed by any national policies. Moreover, it appears that even amongst persons who deal with fundamental rights, awareness of the Charter is not necessarily high. This was also the perception expressed by civil society stakeholders in a consultation FRA carried out during the summer of 2018, in connection with this Opinion. FRA sent a questionnaire on the Charter to the (then-) 714 participants in its Fundamental Rights Platform, which brings together civil society actors active in the field of fundamental rights across the EU. 114 organisations replied to this anonymous consultation in a complete manner.<sup>36</sup>

When asked whether they thought that human rights civil society actors in their country were sufficiently aware of the Charter and its added value, 91 of the 114 respondents replied in the negative and added that the Charter is not adequately used by civil society actors in their activities. Remarkably, they were of the opinion that national courts, educational institutions, and government at local and national levels are using the Charter to an ever lesser extent. Only National Human Rights Institutions and Equality Bodies were deemed to make more use of the Charter.<sup>37</sup>

As mentioned, it appears that no Member State policies address this awareness gap. Even when addressing Member State representatives, it is difficult to identify policies that openly and specifically aim to promote the Charter's application – as required under the Charter.<sup>38</sup> For the purpose of this Opinion, FRA asked all of its National Liaison Officers in the 28 governments to identify such policies. Eleven replied explicitly that either such policies do not exist or that they were not aware of them. Another handful of respondents did not reply to this specific question. This situation is also reflected in the lack of awareness amongst civil society actors concerning government policies promoting the Charter.

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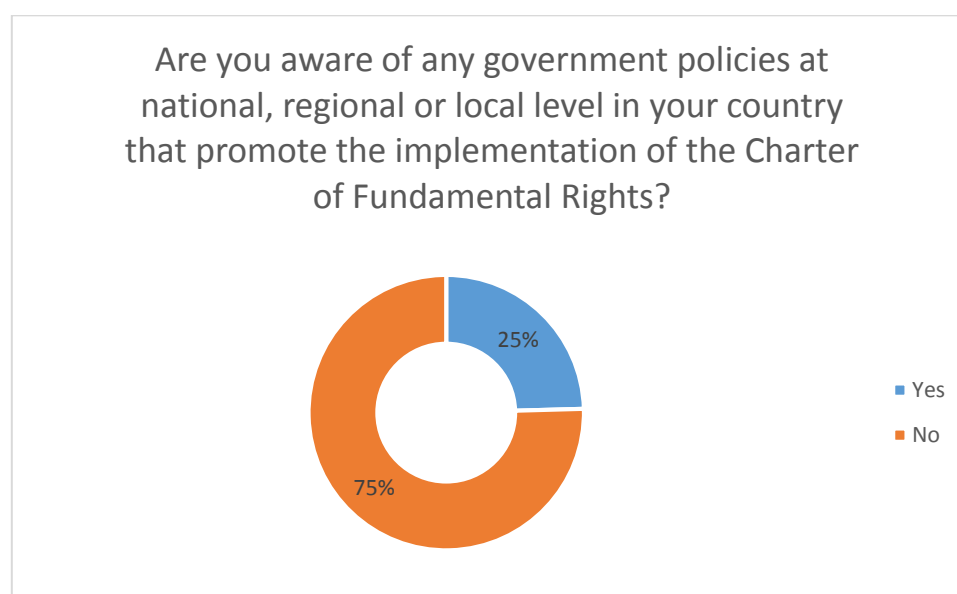
<sup>35</sup> Eurostat (2012), Flash Eurobarometer [340](#).

<sup>36</sup> Seventy-six replies were incomplete and not taken into consideration.

<sup>37</sup> Compare this assumption with studies in this regard which paint a rather mixed picture. See, for example, Moraru, M.B. (2017), [Report on the use of the EU Charter on Fundamental Rights by National Human Rights Bodies and Practical Guidelines on the Strategic Use of the EU Charter by National Human Rights Bodies](#), Centre for Judicial Cooperation, 2017; Porceda, M.G. (2017), [Use of the Charter of Fundamental Rights by National Data Protection Authorities and the EDPS](#), Centre for Judicial Cooperation, 2017.

<sup>38</sup> Article 51(1) of the Charter.

**Figure 11: Awareness of Charter-related policies among participants in the Fundamental Rights Platform**



Source: FRA, 2018

However, a few promising practices stick out. For instance, in Finland, the government's 2014 human rights report already noted the importance of the EU in the promotion of fundamental rights and stressed the importance of making the Charter known among the general public.<sup>39</sup> In 2016, the Ministry of Justice prepared a Memorandum on the Interpretation and Implementation of the EU Charter for fundamental rights.<sup>40</sup> The objective of the memorandum is to provide practical assistance for Finnish civil servants in the EU and national legislative work, and in particular when considering questions relating to the application of fundamental rights in EU law. The memorandum seeks to provide practical help in identifying situations where the EU Charter applies, and to understand how it differs from other fundamental and human rights instruments, especially the ECHR and the national constitutional rights.

Sweden in 2016 announced a review of the Charter's application as part of the government's human rights strategy.<sup>41</sup> At the request of the government, the University of Uppsala carried out a study which analysed the courts' application of the Charter, and potential reasons as to when the Charter is used in a larger or lesser degree, or not at all. And it identified good examples of how the Charter's application is secured in other Member States and in EU institutions, organs and agencies.<sup>42</sup> The study identifies the fact that the Charter is still a young instrument as one reason why its use is still rather limited, noting that it also took a while until the ECHR was known and used in legal practice.

<sup>39</sup> See Finland (2014), Government Human Rights Report 2014 (*Ulkoasiainministeriö, Utrikesministeriet, Valtioneuvoston ihmisoikeusselonteko 2014*), Publications of the Ministry of Foreign Affairs (Ulkoasiainministeriön julkaisuja), June 2014.

<sup>40</sup> Finland, Ministry of Justice (2016), Document OM 1/469/2016, available only in Finnish. An updated version of the Memorandum is currently in progress and is expected to be finalised in late autumn.

<sup>41</sup> Sweden, Ministry of Culture (2016, [Official letter 2016/17:29 The government's strategy on human rights on a national level](#) (2016/17:29 Regeringens strategi för det nationella arbetet med mänskliga rättigheter, Skr. 2016/17:29), 13 October 2016.

<sup>42</sup> The assignment to the University of Uppsala is available [here](#).

Poland also showed interest in better understanding how the Charter is used in daily practice. Focusing on the judiciary, the Polish foreign ministry in 2015 convened a conference, which resulted in a collection of essays analysing the Charter's use by different branches of the Polish judiciary.<sup>43</sup>

Apart from such rather exceptional examples, it is possible to identify some cursory Charter references in policy documents that promote human rights or have a fundamental rights dimension.<sup>44</sup> The picture is more promising when looking at a specific form of state policies, namely the training of legal practitioners. In this context, it is easier to identify examples of states launching Charter related initiatives (including those launched by transnational research cooperation efforts),<sup>45</sup> for which they often received specific EU funding.

### FRA Opinion 3: Policies promoting the Charter's use at national level

FRA's consultations made clear that there is a lack of national policies that promote awareness and implementation of the Charter. The instrument entered into force only nine years ago, but Member States are obliged to both respect the Charter's rights and to "promote the application thereof in accordance with their respective powers" (Article 51 of the Charter). Legal practitioners – especially those in national administrations, the judiciary and national parliaments – have a central role to play in the Charter's implementation. It is vital for them to be fully aware of the Charter's potential to effectively fulfill that role. At the same time, there is a need to increase awareness among rights holders so that rights are invoked and implemented in practice.

***EU Member States should ensure that targeted training modules are offered for national judges and other legal practitioners on a regular basis and in a manner that meets demands and guarantees sufficient ownership.***

***Member States should aim to regularly assess the Charter's actual use in national case law and legislative and regulatory procedures, with a view to identifying shortcomings and concrete needs for better implementation of the Charter at national level.***

***Member States should launch initiatives and policies aimed at promoting awareness and implementation of the Charter at national level, so that the Charter can play a relevant role wherever it applies. Such initiatives and policies should be evidence-***

<sup>43</sup> Poland, Ministry of Foreign Affairs (2016), Application of the EU Charter of Fundamental Rights by Polish Courts, Bilingual conference proceedings. To maximise the practical impact of the legal analysis, the ministry announced that the publication will be distributed in print to appellate and district courts, administrative courts, national and regional organisations for legal professionals, and academic centres/universities.

<sup>44</sup> Greece, General Secretariat for Transparency and Human Rights, Hellenic Ministry of Justice (Γενική Γραμματεία Διαφάνειας και Ανθρωπίνων Δικαιωμάτων, Υπουργείο Δικαιοσύνης) (2014), [Human Rights National Action Plan 2014-2016 \(Εθνικό Σχέδιο Δράσης για τα Ανθρώπινα Δικαιώματα\)](#), 2014; Bulgaria, Government (Министерски съвет) (2012), [Национална стратегия на Република България за интегриране на ромите \(2012-2020\)](#), 13 March 2012; Bulgaria, Министерски съвет, [Национална стратегия за интегриране на лицата, получили международна закрила в Република България \(2014-2020\)](#), *National Roma integration strategy of the Republic of Bulgaria (2012-2020)*. In France, some of the ongoing citizens consultations on Europe are dedicated to fundamental rights issues. For more information visit the following [website](#).

<sup>45</sup> See, for example, the project 'CFREU – Making the Charter of Fundamental Rights a Living Instrument', which was co-financed by the EU and carried out in Austria, Italy, Poland and Croatia. Another EU-funded project was 'ACTIONES' (Active Charter Training through Interaction of National Experiences), coordinated by the EUI Centre for Judicial Cooperation in Italy. It involved 17 partners, including nine national institutions responsible for training judges and lawyers. Another project which just concluded is 'Judging the Charter' – run by expert institutions from Austria, Croatia, Greece, Italy and Poland.

***based, building on regular assessments of the use and awareness of the Charter in the national landscape.***

## 2.2. The Charter and the legislature: impact assessments, legal scrutiny and the potential of a fully-fledged 'Article 51 screening'<sup>46</sup>

### **Charter's role in legal scrutiny**

In most Member States, there is an explicit obligation to check bills against national fundamental rights standards. Moreover, many national systems establish the explicit obligation to ensure draft legislation (or regulations) is assessed for its compatibility with international law and/or EU law. The European Convention on Human Rights (ECHR), which, in contrast to the Charter, is not limited to situations falling within the scope of EU law, is often mentioned in such procedural rules as an explicit benchmark that bills have to be checked against. An example serves Bulgaria where bills have to come with a statement by the Ministry of Justice certifying the compliance with the ECHR and the case law of the ECtHR.<sup>47</sup> The Charter to the contrary is hardly referred to in such procedures which risks negatively affecting the use of the Charter.

FRA has in the past collected and analysed, on an annual basis, examples of the Charter being referred to when draft national legislation was scrutinised from a legal perspective. It asked its research network to identify, in all EU Member States, examples of where the Charter played a relevant role. This exercise showed that it was often not possible to identify three such examples. Very often, the examples given concerned instances where the Charter did not make any difference to the legislative file.<sup>48</sup> In other examples, the Charter was peripherically referred to but was not actually applied in the scrutiny itself.<sup>49</sup>

Examples from practice show that such fundamental rights scrutiny can usefully affect draft legislation and increase sustainability of the bill by making it Charter-compliant, hence pre-empting future contestation of the law in this regard. To give an example from criminal law: a draft law introduced by the president of Lithuania stipulated, among other things, that an alien's request for a residence permit shall not be considered if a relevant institution has received information that the alien is suspected of committing a crime abroad.<sup>50</sup> The European Law Department of the Ministry of Justice issued an opinion pointing out that such a provision may contravene the presumption of innocence (Article 48 of the Charter).

Obviously, procedural rules regarding how bills are drafted at national level differ widely. Some require draft laws to come with explicit reasoning, a separate accompanying explanatory report and an opinion or letter analysing the draft's

<sup>46</sup> Some of the national legislation reflected in this section reflects the situation in force in 2015 and was not checked for updates that might have taken place in the meantime.

<sup>47</sup> Bulgaria, Normative Regulations Act (Закон за нормативните актове), 3 April 1973, Art. 28, para. 3 as revised in 2016 (in force since 4.11.2016).

<sup>48</sup> For examples of legal scrutinies and/or impact assessment where the Charter was referred to see the [Charter chapters](#) of the *FRA Fundamental Rights Report* as published since 2014.

<sup>49</sup> By way of illustration, see Sweden, Council of Legislation (*Lagrådet*) (2015), Tax surcharge: Prohibition against dual trials and other issues concerning the rule of law ([Skattetillägg: Dubbelprövningsförbudet och andra rättssäkerhetsfrågor](#)), Report from the Council of Legislation, 1 June 2015.

<sup>50</sup> Lithuania, Law on the legal status of aliens ([Istatymas „Dėl užsieniečių teisinės padėties“](#)), Art. 26(1).



compatibility with EU law.<sup>51</sup> But even then, the way in which such procedural norms refer to EU law differs. For instance, in Italy, bills are assessed through the lens of relevant EU case law, explicitly also referring to pending infringement procedures.<sup>52</sup> Overall, it appears that, in most Member States, fundamental rights are not explicitly mentioned as part of the requirements of such an 'EU-law check'. In this sense, the procedure in Finland, which explicitly requires examining the bill's compatibility with EU fundamental rights, is the exception rather than the rule.<sup>53</sup>

### Charter's role in impact assessments

The Charter can already play a role before the stage of legal scrutiny, namely during the assessment of potential impacts of a legislative project. In contrast to legal scrutiny, an impact assessment is an exercise that is not strictly legal in nature; it takes place when a bill has not yet been fully defined, so that various legislative options can be compared. Such assessments mostly focus on economic, environmental and social impacts of bills. However, Member States' procedures differ and the legal compatibility check and the assessment of impacts are not necessarily done separately.

By way of illustration, the French impact study (*Étude d'impact*) can assess not only the bill's legal compatibility but also its potential impact. Other countries may deal with a bill's potential impact indirectly as part of the legal scrutiny.<sup>54</sup> Some Member States carry out a full-fledged impact assessment only when they expect significant effects. In Estonia, for instance, the rules for 'good legislation' envisage an impact assessment when 'significant' impacts are foreseen, such as on economics, security and foreign relations, the environment, regional development or organisation of public administration.<sup>55</sup>

Even where specific procedures are available for assessing impacts of draft legislation, they often do not look at fundamental rights as a specific category in relation to which the impact of a draft law should be assessed. By way of illustration, in Croatia, the assessment of impacts includes an analysis of positive and negative effects of regulations on the economy (including financial effects), social welfare and the environment – but the effects on human rights are not explicitly mentioned. Consultations with the public are, however, conducted simultaneously, and comments, suggestions and opinions are to be taken into consideration. Since NGOs most frequently address and identify impacts related to fundamental rights, this sort of impact-assessment exercise *de facto* also covers fundamental rights.<sup>56</sup>

<sup>51</sup> By way of illustration: Bulgaria, Normative Regulations Act (*Закон за нормативните актове*), adopted 3 April 1973 (last revised in 2016), Art. 28, para. 2 (5); Bulgaria, Regulation on the Work of the Council of Ministers and Its Administration (*Устройствен правилник на Министерския съвет и неговата администрация*), 2 October 2009, Art. 35, para. 1 (3); Estonia, Government regulation No. 180 of 22 December 2011 (*Hea õigusloome ja normitehnika eeskiri*, VV 22.12.2011 määrus nr 180), Art. 43, para. 1 (5); and Slovakia, Legislative rules of the Government of the Slovak Republic (*Legislatívne pravidlá vlády Slovenskej Republiky*), Art. 3.

<sup>52</sup> Italy, Directive by the Prime Minister on the timing and modalities of the technical-normative analysis (*Direttiva del presidente del consiglio dei ministri, tempi e modalità dell'analisi tecnico-normativa*, ATN), 10 September 2008.

<sup>53</sup> Finland, Ministry of Justice (2004), *Hallituksen esitysten laatimisohteet*, Helsinki, Edita Prima Oy; Finland, Ministry of Justice, *Lainkirjoittajan opas*.

<sup>54</sup> The legal proportionality check, for instance, will assess the bill's potential impact to select, from various potential measures, the one that interferes least with fundamental rights.

<sup>55</sup> Estonia, *Hea õigusloome ja normitehnika eeskiri*, määrus nr 180, 22 December 2011, Art. 46.

<sup>56</sup> Croatia, Regulations Effects Evaluation Act (*Zakon o procjeni učinaka propisa*), Official Gazette No. 90/11; Code of practice on Consultation with the Interested Public in Procedures of Adopting Laws, Other Regulation and Acts (*Kodeks savjetovanja sa zainteresiranom javnošću u postupcima donošenja zakona, drugih propisa i akata*), Official Gazette No. 140/09.



In the Slovak Republic, too, a standardised methodology for assessing selected impacts is in place, but does not contain fundamental rights as a specific category. The potential impacts are divided into seven main thematic areas: public finances, social situation within the country, employment, enterprising entities, functioning of markets, the environment and information technologies in society.<sup>57</sup> Finland offers an example of a procedure reminding the legislator to address standard questions on the potential fundamental rights implications of bills (including questions on the right to participation, the right to equality, children rights, gender equality or data protection).<sup>58</sup> In the Netherlands, the “Integrated Impact Assessment Framework for Policy and Legislation” (IAK) was adopted in 2011. It provides civil servants with guidance on a number of issues, including on fundamental rights at the start of a policy or legislation process.<sup>59</sup> Since 2014 it also contains a manual explicitly focused on the application of the Charter of Fundamental Rights.<sup>60</sup>

### **Why there is a need for a stronger role of the Charter**

That the Charter appears underused in the preparation of national law- and policy-making is counterintuitive, given that it can safely be assumed that a large part of national law-making includes elements that fall within the scope of EU law and hence should prompt practitioners dealing with the legislative file to engage in what one could call an ‘Article 51-screening’ by:

- a) checking in detail whether the legislative file builds a scenario that, according to CJEU case law, falls within the scope of EU law;
- b) identifying potential limitations of Charter rights;
- c) analysing whether such limitations are at all legally possible under the Charter and, if so, whether they can be justified under the conditions laid down in Article 52(2) of the Charter;
- d) identifying any potential to promote the application of Charter rights and principles.

The Charter also covers socio-economic rights (see Articles 27–38 of the Charter) that are not included in the ECHR. Moreover, the Charter makes explicit certain rights that are as such not to be found in the wording of the ECHR, including in the area of equality. See, for instance, the rights of the child (Article 24), the rights of the elderly (Article 25) or the integration of persons with disabilities (Article 26).

In certain contexts, the Charter is not only more explicit than the ECHR but also provides more protection. This is the case in the context of the right to an effective remedy and a fair trial (Article 47), which is not limited to criminal or civil law procedures but also applies to administrative procedures of all kind. For instance, Article 47 applies to asylum procedures. In fact, the Charter also adds to the visibility of human-rights entitlements compared to texts of national constitutional law. There are many Charter provisions that would find an explicit provision of constitutional rank corresponding to these Charter rights only in less than half of the EU Member States. Such rights include not only socio-economic rights – such as the right of access to placement services (Article 29), the protection in the event of unjustified dismissal (Article 30) or workers’

<sup>57</sup> Slovakia, Ministry of Economy (*Ministerstvo hospodárstva SR*), [Jednotná metodika](#).

<sup>58</sup> Finland, Ministry of Justice, [Manual for Law Drafting – Guidelines for Drafting National Legislation](#), last updated on 18 August 2015, and [EU Manual for Law Drafting](#), last updated on 27 March 2012.

<sup>59</sup> See this [website](#).

<sup>60</sup> See section 6.2.1. of the framework.

right to information and consultation within the undertaking (Article 27) – but also rights such as the right to access to documents (Article 42).

Although the Charter only applies within the scope of EU law, it is nevertheless worthwhile to consult the Charter because it might draw attention to rights that are not prominently enshrined in the national constitution or the ECHR but are nevertheless protected under another piece of national law or the case law of the European Court of Human Rights or an ECHR protocol.

Against this background, it would be of added value for national procedural provisions regulating how legislators carry out legal scrutinies and/or assess impacts to refer not only to national constitutional rights and the ECHR. These procedures should also explicitly refer to the Charter of Fundamental Rights. If they make no such explicit reference, there is a risk that the Charter's potential is not fully used in law- and policy-making at national level. At the same time, a more prominent use of the Charter should not discourage actors from referring to international or other European human rights instruments as they might add value in the specific context.

#### FRA Opinion 4: The Charter and legislative processes in EU Member States

Article 51 (field of application) of the EU Charter of Fundamental Rights provides that all national law implementing EU law has to conform with the Charter. Although a significant proportion of national bills contains elements falling within the scope of EU law, the available evidence suggests that the Charter is used neither frequently nor in detail in legislative impact assessments and legal scrutiny of bills. Reference is often made to national and international law, but not to the Charter. Adding the 'Charter perspective' allows detecting, at an early stage, both possible limitations of Charter rights and the draft legislation's potential to promote Charter rights and principles.

***EU Member States should review their national procedural rules on legal scrutiny and impact assessments of bills from the perspective of the EU Charter of Fundamental Rights. Such procedures should explicitly refer to the Charter, just like they do to national human rights instruments, to minimise the risk that the Charter is overlooked.***

***Member States should consider a more consistent 'Article 51 screening' in the legislative process to assess at an early stage:***

- ***whether or not a legislative file (partly) falls within the scope of EU law and thus also the Charter;***
- ***whether the legislative proposal could potentially limit Charter rights;***
- ***whether such limitations are in line with Article 52(2) of the Charter;***
- ***whether the legislative proposal has the potential to proactively promote the application of Charter rights and principles.***

***Standardised handbooks outlining practical steps to take to check whether the Charter applies – which so far exist only in very few EU Member States – would be useful tools for legal practitioners. FRA's forthcoming Handbook on the applicability of the Charter will serve as a model for such tools.***

## 2.3. The Charter and the judiciary: some cases clearly show the Charter's potential

FRA collects, on an annual basis, national case law referring to the Charter. It is not possible every year to identify judicial decisions for each Member State in which the Charter plays a relevant role in courts' reasoning.<sup>61</sup> To the contrary, the collected evidence suggests that the Charter's use in national courts is often rather limited, especially as regards quality references to the Charter. At the same time, many interesting national court decisions underline the Charter's potential in the national judiciary.

### **Use of the Charter before national courts and the difficulty of measuring its 'impact'**

National procedural laws vary substantially in the degree to which the arguments put forward by the parties determine the scope of proceedings. Consequently, whether or not a court can raise a 'Charter argument' independently varies from state to state.<sup>62</sup> Moreover, the use of the Charter diverges within Member States from court to court.<sup>63</sup> And the availability of data is limited as the case law of lower courts is not accessible and searchable in all countries. It is also difficult to define the amount of Charter-relevant court decisions to be considered as 'normal' in a given country. It is also not helpful to compare the Charter's use with the use of the ECHR, given that the Charter only applies within the scope of EU law.

The rather low number of national court decisions in which the Charter plays a relevant<sup>64</sup> role cannot be attributed solely to low awareness of the Charter. Over the past five years, national judges – and not the parties – raised Charter-related arguments in a rather constant share of around 50 % of the decisions communicated to FRA. This demonstrates that judges have a certain awareness of the Charter.

One reason why the Charter's use before national courts is limited appears to be that it is difficult for legal practitioners to assess whether or not the Charter applies in a concrete case. This is confirmed both by anecdotal evidence<sup>65</sup> and by the sample of judicial decisions collected by FRA over the years. In the analysed court decisions, the judges hardly addressed, let alone analysed in detail, the question of whether or not the Charter applies. Cases in which national courts deal with the Charter's applicability in some detail appear to be the exception rather than the rule.<sup>66</sup> Often, the analysed court decisions give the impression that the judges wanted to 'play it safe' by 'packaging' together various human rights sources. In fact, looking at the past 5 years, in close to two-thirds of the cases analysed by FRA, the Charter was referred to next to the ECHR. Very often national constitutional provisions and sometimes even

<sup>61</sup> This is not to say that the Charter would not be often referred to, especially at the level of lower courts. For instance, in France in 2013-2014, administrative courts mentioned the Charter in more than 1,200 decisions. See the intervention by [Jean-Marc Sauvé](#), Vice-président du Conseil d'État, at the conference organised by the European Union on 17 December 2014.

<sup>62</sup> See Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union (2012), [General report](#), p. 10.

<sup>63</sup> By way of illustration, in 2017 in Austria, the Supreme Court referred to the Charter 14 times, the Constitutional Court did so 34 times and the Supreme Administrative Court did so 140 times.

<sup>64</sup> A relevant role meaning that the Charter was analysed in detail in the court's reasoning and/or where the reference to the Charter had an impact on the outcome of the case.

<sup>65</sup> When FRA provides training to legal practitioners, participants regularly refer to the unclear scope of application of the Charter as one stumbling block preventing a more regular use of the EU instrument.

<sup>66</sup> By way of illustration, one can point to the following judicial decisions: Ireland, High Court, [Case IEHC 246s, Judgment of 30 April 2013](#), especially para. 50; Cyprus, Supreme Court, [Civil Applications Nos 216/14 and 36/2015](#), Decision of 27 October 2015; France, State Council, [No. FR:CESSR:2015:383664.20150511](#), Decision of 1 May 2015; Denmark, High Court, [Case 236/2014](#), 2 June 2016.

international human rights conventions were also referred to. This phenomenon, though quite natural, makes it even more difficult to assess the Charter's impact on the outcome of concrete cases.

### **Charter's considerable potential for the national judiciary**

The above is not meant to suggest that the Charter is not an important tool for the national judiciary. The Charter already often makes a difference in national courts. Most frequently, judges use the Charter to interpret national law in one or the other direction. For instance, in a Swedish case, Article 24 of the Charter (rights of the child) played a relevant role.<sup>67</sup> The case concerned a man who had helped a family to cross the border illegally. Normally, a person who is paid for assisting a foreigner's entry into Sweden is sentenced to three to four months in prison. However, in light of Article 24, the court decided to change the prison time to a suspended sentence and community service because the person concerned was motivated by the desire to help children. Judicial practice illustrates that the Charter fulfills such an interpretative function even in cases that do not fall within the scope of EU law, and in which the Charter is therefore not formally applicable.<sup>68</sup>

Charter rights that are not mirrored in national constitutional law appear especially likely to be used by national judges as a source of inspiration to close possible protection gaps. Children's rights, the right to good administration or consumer protection are examples in this regard. A case from Slovakia concerned a telephone company that took one of its clients to court for not paying his bills. The company argued that, by affording specific protection to consumers, the Consumer Protection Act interfered with the principles of a fair trial and equality of arms set out in the Slovak Constitution and was hence unconstitutional. The court acknowledged that the Slovak Constitution does not provide a specific right to consumer protection and that the Charter thus provides a higher level of consumer protection than the constitution. However, it found that, as the Charter is part of the national legal order, Slovakia is bound by its provisions. The court also referred to the Consumer Protection Act's legislative history, which showed that the rationale for including the provision at issue in the act was to address problems found in practice and to ensure effective protection of consumers' rights, embodied in Article 169 of the TFEU and Article 38 of the Charter.<sup>69</sup>

The Charter is in some instances also used as a benchmark when reviewing national law. In this context, it is noteworthy that, in 2012, the Constitutional Court in Austria referred to the principle of equivalence and concluded that the rights of the Charter can be invoked as constitutional rights and, within the scope of the Charter, constitute a standard of review in the proceedings of constitutional complaints.<sup>70</sup> That same year, the Constitutional Court of Romania relied on the provisions of the Charter in its constitutionality review, basing this on the Romanian constitution's integration clause in Article 148.<sup>71</sup> Disapplying national law that is in contradiction with the Charter can have major practical relevance for the individuals concerned. By way of illustration: invoking Article 49 (principles of legality and proportionality of criminal offences and

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<sup>67</sup> Sweden, Skåne and Blekinge Court of Appeal, Case B 7426-15, 5 December 2016.

<sup>68</sup> By way of illustration, see Spain, *Tribunal Constitucional*, [Case 167/2013](#), Judgment of 7 November 2013.

<sup>69</sup> Slovakia, Regional Court Prešov, [Case 17Co/286/2015](#), 28 June 2016.

<sup>70</sup> Austria, *Verfassungsgerichtshof*, Case U466/11; [U1836/11](#), Judgment of 14 March 2012.

<sup>71</sup> Romania, *Curtea Constituțională a României*, [Case 1021D/2012](#), Judgment of 20 November 2012.

penalties) of the Charter, a Romanian court reduced a 26-year prison sentence to 10 years.<sup>72</sup>

There is no need for an explicit recognition of the Charter as a standard of constitutional review for it to play a relevant role. For instance, in 2017, the United Kingdom's Supreme Court noted that fees introduced in 2013 by employment tribunals contravened EU law's guarantee of an effective remedy before a tribunal as enshrined in Article 47 of the Charter. Because the fees were unaffordable in practice, the Fees Order was deemed a disproportionate limitation on Article 47 in light of Article 52 (1) of the Charter.<sup>73</sup> In 2016, the Charter was invoked before the Czech Constitutional Court in a case concerning a German national arrested and prosecuted for being a member of a criminal group that trafficked drugs from the Czech Republic to Germany.<sup>74</sup> The court stressed the extended transnational protection of the *ne bis in idem* principle as laid down in the Charter, compared with the more limited scope of the corresponding constitutional provision. Consequently, the decisions of the authorities involved in the criminal proceedings were annulled.

The added value of the Charter becomes apparent when considering the principles of direct effect and supremacy associated with the nature of EU law. Some Charter provisions can be seen as creating a "free standing right". This was the wording used by a UK court referring to paragraph 3 of Article 23 of the Charter, which states:<sup>75</sup> "Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests." The provision precluded – in the eyes of the court – the deportation of a Nigerian national who had been continuously resident in the United Kingdom for 25 years and whose two daughters were both British citizens, aged 13 and 11.

Another example from the United Kingdom is the *Benkharbouche* case, which concerned two employees, one of the Sudanese embassy and one of the Libyan embassy. Both made claims arising out of their employment and were met with pleas of state immunity. These pleas were upheld by two separate employment tribunals and both parties appealed. The claimants invoked Article 47 of the Charter and argued that the State Immunity Act 1978 (SIA), which provides for state immunity in UK law, should be disapplied to the extent the claims fell within the material scope of EU law. The employment appeals tribunal addressed whether a direct application of the Charter implies that national law contrary to the Charter must be disapplied in a claim litigated between private individuals. The court concluded that, whereas the Human Rights Act "does not permit the disapplication of any statutory provision, [...] EU law requires it where it concerns the material scope of EU law"; thus, for the claims covered by EU law, certain provisions of the SIA were "to be disapplied".<sup>76</sup>

This illustrates how the EU law principles of direct effect and supremacy provide the Charter with additional teeth compared to other sources of law, such as e.g. the ECHR. Although the UK Human Rights Act allows courts – only higher courts – to issue a 'declaration of incompatibility' when an act of parliament is not in line with the ECHR, the act remains in force and it is only for parliament to amend the act. In contrast,

<sup>72</sup> See Romania, *Tribunalul Arad*, Decision of 25 January 2016.

<sup>73</sup> United Kingdom, [Case UKSC 2015/0233](#), 26 July 2017.

<sup>74</sup> Czech Republic, Constitutional Court, [Case II. ÚS 143/16](#), 14 April 2016.

<sup>75</sup> United Kingdom, Upper Tribunal (Immigration and Asylum Chamber), [Case UKUT 106 \(IAC\)](#), 13 January 2016. The Constitutional Court of Austria recognised the direct applicability of the third paragraph of Article 47, which stipulates that legal aid "shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice". See Austria, Constitutional Court, [Case G447/2015](#), 9 March 2016.

<sup>76</sup> United Kingdom, Employment Appeal Tribunal, [Case UKEAT 0401\\_12\\_0410](#), Judgment of 4 October 2013 and Court of Appeal (Civil Division), [No. A2/2013/3062](#), Decision of 5 February 2015.

courts – including lower courts – that come across human rights enshrined in EU law have to set aside contrasting national norms if EU human rights are directly applicable.

### **Where the Charter is most frequently used in national courtrooms**

Other than the general provisions in Articles 51 and 52, the rights most frequently used in the court decisions communicated to FRA – most of them high court decisions – were procedural rights. The most prominent are Article 47 (effective remedy and fair trial), Article 48 (presumption of innocence and right of defence) and Article 41 (right to good administration). Substantive rights often used in the national court decisions communicated to FRA over the past 5 years included: data protection (Article 8), private and family life (Article 7), the rights of the child (Article 24), equality and non-discrimination (Articles 20 and 21), but also the right to property (Article 17) and the right to conduct a business (Article 16).<sup>77</sup>

Policy areas that most often appeared to generate national court decisions using the Charter were issues related to (judicial cooperation in) criminal matters and civil matters, but also asylum, border and immigration issues. Other policy areas often reflected in the national court decisions communicated to FRA include employment policies, social policy, non-discrimination and data protection.

National judges also use the Charter beyond its scope of application as defined by Article 51. A good example is the right to good administration, laid down in Article 41, which is explicitly limited to “institutions, bodies, offices and agencies of the Union” – but which is also one of those provisions that find only in few constitutional systems a corresponding provision. To give just one example: in 2015, a court in Italy interpreted a national law in light of Article 41 of the Charter in a case that concerned a complaint filed by a lawyer who was refused admission to the oral test of the bar examinations by the Bar Examinations Board of the Ministry of Justice.<sup>78</sup>

Similar judgments can be found for other Charter rights. For instance, in an Italian case concerning gender balance in an executive body of a municipality, the court referred to Charter Articles 21 and 23, concluding that “a normative corpus exists and it should become the tool for interpreting the domestic legal order”.<sup>79</sup> Another Italian court judgment, while recognising that the Charter did not apply to the case at hand, seemed to say that this would not necessarily limit its interpretative value. The Italian court underlined that the Charter was an expression of common principles of European legal systems and therefore had – as a source of interpretation – a function within the national legal system even outside the scope of EU law.<sup>80</sup> All this confirms that the inspirational role of the Charter goes beyond its scope as defined in its Article 51(1).

### **FRA Opinion 5: The Charter and its use before national courts**

FRA regularly collects relevant decisions by judges. They paint a mixed picture of the Charter’s use at national level. The number of judicial decisions in which courts refer to the Charter in detail and/or where a reference to the Charter has an impact on a case’s outcome appears low. At the same time, national case law shows that the Charter is relevant both for individual rights holders and for the development of the

<sup>77</sup> Compare in this regard Section 3.2. on preliminary ruling procedures.

<sup>78</sup> Italy, Lazio Regional Administrative Tribunal, Decision [No. 201509411](#) of 14 July 2015. See also Slovakia, Supreme Court of the Slovak Republic, [Case 10SžA/4/2016](#), 25 May 2016; Lithuania, Supreme Administrative Court, [Case eA-3282-822/2017](#), 18 April 2017; Slovakia, Supreme Court of the Slovak Republic, [Case 10SžA/4/2016](#), 25 May 2016.

<sup>79</sup> Italy, Regional Administrative Tribunal, Rome-Second section (*Tribunale regionale amministrativo* (TAR)), Case 633, 21 January 2013.

<sup>80</sup> Italy, *Corte Suprema di Cassazione*, Case 41, 3 January 2013.



legal systems. For case law to more consistently use the Charter's potential, awareness of the Charter needs to be increased amongst judges. In addition, courts need to exchange relevant practical experiences – both within states and across national borders. Courts can consult references to case law collected in Charterpedia and communicate relevant judgments directly to FRA at [charter@fra.europa.eu](mailto:charter@fra.europa.eu).

***The EU and its Member States should encourage greater information exchange on experiences with and approaches to referencing and using the Charter. This exchange should take place both between judges of different courts within a given Member State and between judges of comparable courts across Member States. In encouraging this information exchange, EU Member States should make best use of existing judicial networks and EU funding opportunities. Courts, equality bodies and other National Human Rights Bodies could consider communicating their use of the Charter on their websites and national courts could insert Charter-related search fields in their case law databases to allow for better access to Charter-relevant case law.***



### 3. Cooperation between the EU and national levels: existing channels and ways forward

Article 2 of the TEU makes clear that the Union is founded on shared values, including the respect for fundamental rights. It underlines that these “values are [also] common to the Member States”. It is the EU’s aim to promote “its values and the well-being of its peoples”. The same is true for the Member States and their constitutions, which also aim to protect rights. Fundamental rights are hence a shared concern – and, in contexts like discrimination or data protection, also an area of shared legislative competence – of the different layers of governance within the EU.

Following up on the Parliaments’ request, this section gives examples of interaction between the EU and the Member States and how the former can better assist the latter in the implementation of the EU Charter of Fundamental rights. These cover the cooperation between agencies and Member States (Section 3.1); cooperation between EU and national courts (Section 3.1); and cooperation in the context of EU funding (Section 3.3). The question arises whether more could be done at EU level to better assist EU Member States in implementing the Charter. Responses to this are brought together (Section 3.4) before concluding with a view to an enhanced exchange of practices between the EU Member States in a Council Working group (Section 3.5).

#### 3.1. Existing tools: cooperation between JHA agencies and EU Member States

Some examples of JHA agencies’ activities that can be relevant for Member States in the context of implementation of the Charter are outlined below.

##### *Fundamental Rights Agency*

- databases holding data and evidence collected by the agency according to theme, which Member States can access according to their needs (Charterpedia, which is currently being upgraded to contain more information about the Charter’s relevance at national level).
- handbooks for practitioners (handbooks on fundamental rights-based policing; handbooks with case law for legal practitioners; handbook on the applicability of the Charter).
- fundamental rights indicators (Roma integration, rights of the child);
- guidelines or codes of conduct (dealing with PNR data; apprehension of irregular migrants; health care professionals dealing with irregular migrants);
- compilations of case studies and promising practices (Roma housing for local authorities);
- training sessions and/or curricula (fundamental rights training curriculum for border guards).

##### *EIGE*

- annual monitoring reports on the implementation of one of the critical areas of the Beijing Platform for Action; these reports form the basis of Council Conclusions;

- country visits, where it organises specific events for administration, civil society and academia.<sup>81</sup>

#### *Eurojust*

- in its recommendations for national authorities, Eurojust can touch upon fundamental rights issues in cases of conflicts of jurisdictions (linked to Art. 50) – i.e. when advising which jurisdiction is the best to investigate, prosecute and try a given criminal case;
- thematic discussions and seminars to discuss good practices, as well as guidelines and reports.

#### *EASO*

- provides both trainings and guidance<sup>82</sup> as well as support tools to promote Charter rights, including a specific training module on fundamental rights and international protection, which is centred on relevant Charter rights.

#### *Frontex*

- handbooks (e.g. handbook devoted to children at risk at borders – the VEGA Handbook), videos and other tools and materials, shared in pre-deployment briefings and tailored to the profiles of specific border guards.<sup>83</sup>

#### *Europol*

- carries out prevention campaigns to protect young people from sexual extortion, through the internet. Europol developed videos in cooperation with EU Member States that are translated into various EU languages and distributed to EU Member States to raise awareness among children and teenagers. The videos seek to create awareness among young people so that they understand when an individual tries to make indecent contact with them;
- when cooperating with the agency, law enforcement authorities must adhere to Europol's legal framework, including its data protection rules (use the automated communication system SIENA).

#### *CEPOL*

- specific fundamental rights-based training courses,<sup>84</sup> webinars and other learning activities, including the production of relevant material on these matters for law enforcement officers and judicial staff;
- common curriculum on police ethics.

#### *Eurofound*

offers extensive research, including on: working conditions; youth unemployment and NEETs (youth not in employment, education, training); posting of workers;

<sup>81</sup> The event in Malta in 2016, for example, focused on some of the main gaps identified through the gender equality index in Malta. One of the gaps concerned intersectional inequalities, for example, relating to the situation of women above 50 years of age.

<sup>82</sup> The recent EASO guide on age assessment gives guidance on how to avoid inherent risks (for example, avoiding intrusive methodologies disproportionately interfering with the right to respect for private life) and describes the age assessment process, including its interlinkages with the best interests of the child.

<sup>83</sup> To give an example: a tool on access to international protection developed by EASO and Frontex with the support of FRA helps clarify what border guards should do when facing an application for international protection. A video on child protection at the border produced by Frontex together with FRA is disseminated in hotspots.

<sup>84</sup> Specific CEPOL courses cover the area of hate crime as well as the area of victim protection. Since 2014, CEPOL also holds courses on fundamental rights in the context of Common Security and Defence Policy (CSDP) missions. CEPOL has increased the number of courses and webinars related to migration and trafficking of human beings. Some of the CEPOL courses and webinars are organised with the support of FRA.

discrimination in relation to gender pay gap); inclusion of people with disabilities; industrial relations; collective bargaining processes; work-life balance; access to public services; integration of migrants and minorities; preventing trafficking of labour; social security and fight against poverty and housing. *EMCDDA*

- promotes the Charter rights through its evidence-based publications. For instance, in the report “Health and social responses to drug problems: a European guide”, *EMCDDA* mentions a whole series of rights in the area of health and social assistance (see p. 15), including right to the integrity of the persons (free and informed consent of the person);
- *EMCDDA* publications reach policy makers, scientific community, but also professionals and practitioners. Examples of professionals include health practitioners, law enforcement officers, intelligence officer, teachers and professors, and others working in the drug sector;
- *EMCDDA* also provides training for practitioners and professionals. These training events also incorporate fundamental rights.

## FRA Opinion 6: EU agencies’ potential to assist EU Member States

Based on their mandates, EU agencies carry out countless fundamental rights-relevant activities in diverse contexts. This includes offering expertise, advice and practical support to EU Member States, such as through training activities, handbooks and practical tools. There is potential to increase such cooperation by better mapping existing practices and unmet needs at Member State-level.

***EU agencies should exchange their practices and experiences, including in the relevant agencies’ networks, on how to best assist EU Member States in implementing the Charter. Member States in turn could annually exchange experiences and express needs with regard to assistance from EU agencies in the Council’s “Working Party on Fundamental Rights, Citizen’s Rights and Free Movement of Persons” (FREMP).***

### 3.2. Existing tools: judicial dialogue with the CJEU

National judges fulfill a very important task in the EU’s institutional machinery and the implementation of EU law. To use the words of the CJEU: “The national court, in collaboration with the Court of Justice, fulfils a duty entrusted to them both of ensuring that in the interpretation and application of the Treaties the law is observed.”<sup>85</sup>

Article 19(3)(b) of the Treaty on European Union (TEU) and Article 267 of the Treaty on the Functioning of the European Union (TFEU) establish the possibility for the CJEU to give preliminary rulings on the interpretation of Union law, including the Charter of Fundamental Rights. The procedure is a “fundamental mechanism of European Union law aimed at enabling the courts and tribunals of the Member States to ensure uniform interpretation and application of that law within the European Union”.<sup>86</sup> It allows for a judicial dialogue between the CJEU and the national courts.<sup>87</sup> Once the CJEU has

<sup>85</sup> CJEU, [Opinion 1/09](#) of 8 March 2011, para. 69. See also Rosas, A. (2014), *The national judge as EU judge: Some Constitutional Observations*, 67 SMU I. Rev. 717.

<sup>86</sup> CJEU (2018), Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings, OJ C 257/01 as of 20 July 2018.

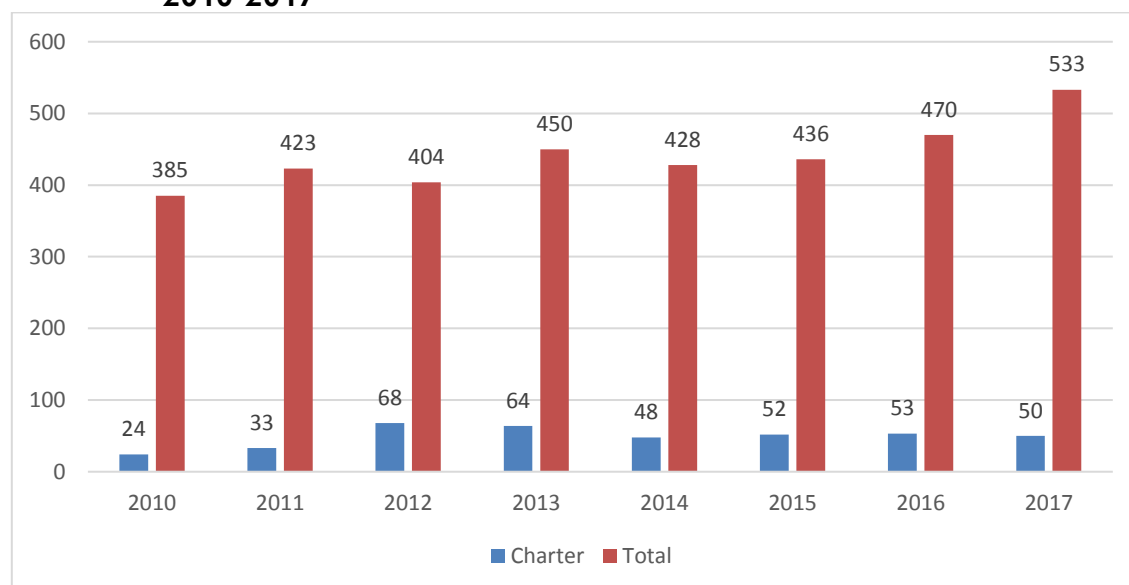
<sup>87</sup> Obviously the Court’s role is also highly relevant in other procedures, including infringement procedures. Whereas over recent years fewer and fewer infringement procedures are brought before the Court by the European Commission, the infringement procedure has a considerable potential to protect fundamental rights. See, in this

delivered – at the request of the national court – an interpretation of a piece of EU law or expressed itself on the validity of such, the national court will take this into account when deciding the case at hand, thereby creating a direct channel of influence between the EU and national layer of governance.

The requests for preliminary rulings do not require a special format. The national court is expected to provide a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court; the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law; and, finally, a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain EU law provisions and the relationship between those provisions and the national legislation applicable to the main proceedings.<sup>88</sup> The court suggests that “about 10 pages is often sufficient to set out in a proper manner the context of a request for a preliminary ruling”.<sup>89</sup>

The preliminary ruling proceedings are an efficient tool for the EU level to assist EU Member States (their courts) to better implement the Charter. Between 2010 (the first year the Charter was in force) and 2017, courts lodged 392 requests for preliminary rulings that include references to the Charter of Fundamental Rights (on average 49 per year). During the same period, 3,528 references for preliminary rulings were made by EU Member States overall. This means that the Charter was mentioned in 11 % of all references. Over the years, the percentage of references mentioning the Charter ranged from 6 % in 2010 to 17 % in 2012 (Figure 12).

**Figure 12: Preliminary ruling requests citing the Charter and total requests by year, 2010-2017**



Source: FRA, 2018 (based on data provided by CJEU, total numbers taken from Court of Justice, 2017 Annual Report on Judicial Activity)

Courts in all EU Member States made use of the preliminary ruling procedure in the context of the Charter. Most references for preliminary rulings that mention the Charter came from Italy, followed by Germany, Belgium, Austria, Spain and Romania (Figure 13). Italy indeed shows an above-average proportion of references to the

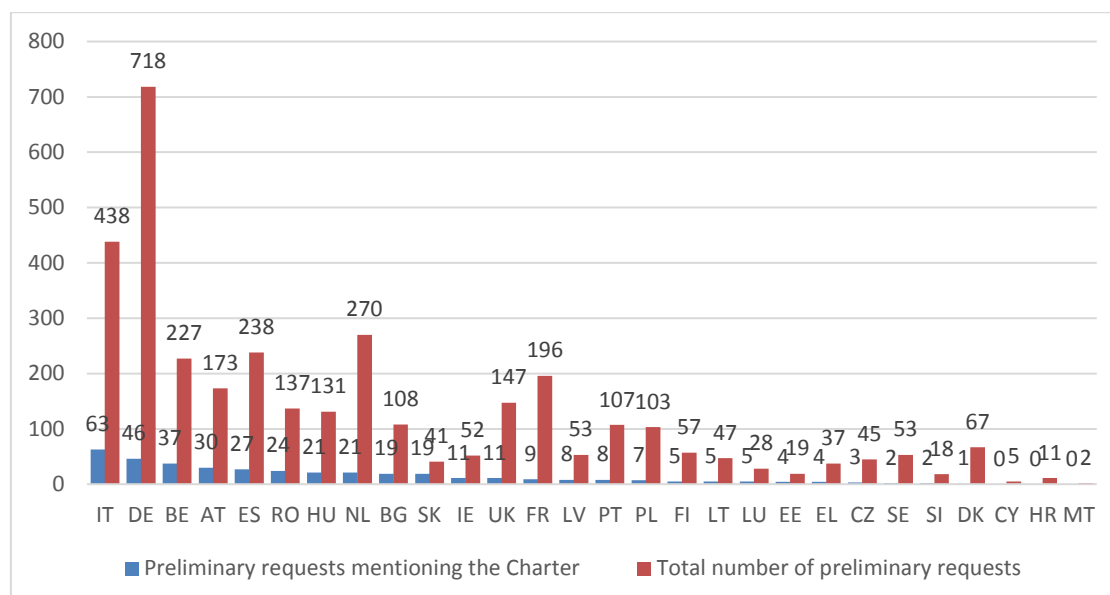
regard, De Schutter, O. (2017), [Infringement Proceedings as a Tool for the Enforcement of Fundamental Rights in the European Union](#), Open Society Foundations Report, October 2017.

<sup>88</sup> See Article 94 (content of the request for a preliminary ruling) of the Rules of Procedure of the Court of Justice.

<sup>89</sup> CJEU (2018), Recommendations, para. 14.

Charter in its preliminary ruling requests to the CJEU. The highest proportion of references mentioning the Charter is found in Slovakia, where the Charter was referred to in 19 of the 41 references made between 2010 and 2017.

**Figure 13: Requests for preliminary rulings that mention the Charter, by country, 2010-2017**

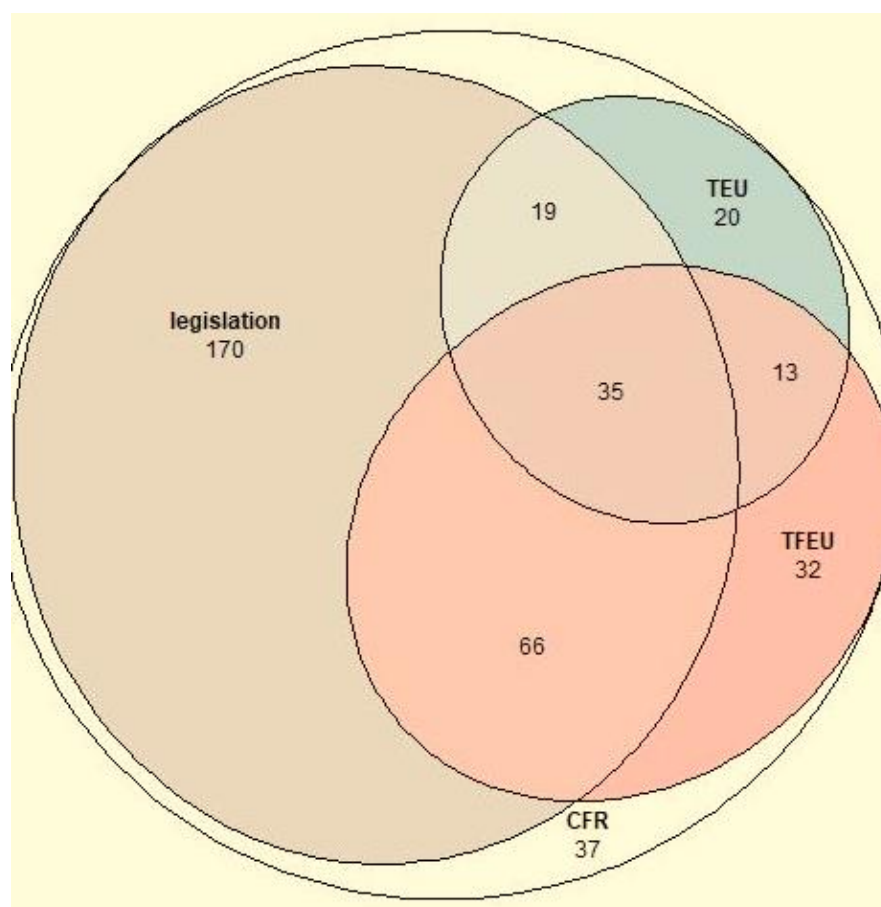


Source: FRA, 2018 (based on data provided by CJEU, total numbers taken from Court of Justice, 2017 Annual Report on Judicial Activity)

As the Charter only applies where another piece of EU law is applicable, requests for preliminary rulings mentioning the Charter also refer to other sources of EU law. In 74 % of the requests from 2010 to 2017, the Charter is referred to in the context of EU legislation, including more than 200 directives, regulations and other pieces of EU legislation.<sup>90</sup> Half of the requests for preliminary rulings that refer to the Charter also include references to the treaties. In 25 % of the requests, the TFEU was mentioned; in 10 % of the requests, the TEU; and in 12 % both (for a more detailed break-down, see Figure 14).

<sup>90</sup> Council Directive 2000/78/EC on equal treatment in employment and occupation was referred to most often in the requests for preliminary rulings registered between 2010-2017; it is mentioned in 31 requests – 8 % of all requests. Other often-mentioned legislation includes Directive 93/13/EEC on unfair terms in consumer contracts (22 requests) and Directive 2003/88/EC on certain aspects of the organisation of working time (18 requests). All are pieces of EU legislation with an obvious fundamental rights dimension.

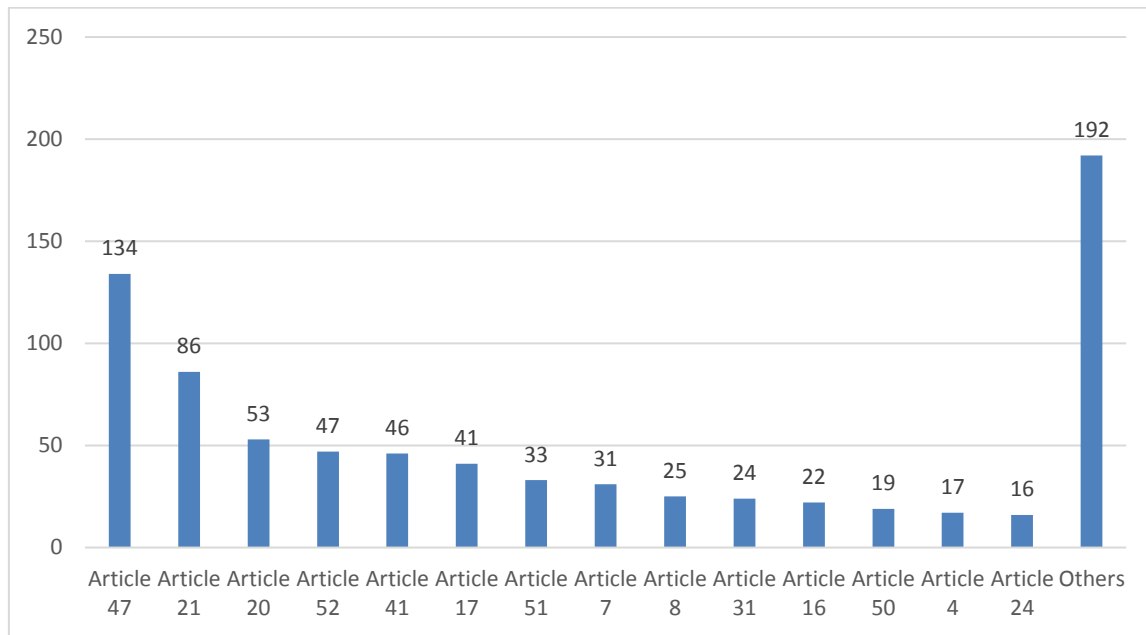
**Figure 14: Mentions of the treaties and EU legislation in the 392 preliminary ruling requests from 2010 to 2017 that refer to the Charter**



Source: FRA, 2018 (based on data provided by CJEU)

The requests most often mention the right to an effective remedy and a fair trial (Article 47), with 134 mentions (see Figure 15). Other articles mentioned often include non-discrimination (Article 21, 86 times), equality (Article 20, 53 times), the scope and interpretation of Charter provisions (Article 52, 47 times) and the right to good administration (Article 41, 46 times). These five articles constitute just over half of all articles references in the requests for preliminary rulings that include the Charter (Figure 15).

**Figure 15: Charter articles cited in requests for preliminary rulings, 2010-2013**



*Note: Due to differing methods of collection some references to articles may not have been captured in the analysis.*

*Source: FRA, 2018 (based on data provided by CJEU)*

For preliminary ruling proceedings to be efficient tools of advice, judges and other legal practitioners – such as lawyers active at national level – need to be well versed in EU law. To avoid being confronted with requests to interpret Charter provisions in cases that fall outside the scope of EU law, the CJEU advises the national courts that it must be “clearly and unequivocally apparent from the request for a preliminary ruling that a rule of EU law other than the Charter is applicable to the case in the main proceedings. Since the Court has no jurisdiction to give a preliminary ruling where a legal situation does not come within the scope of EU law, any provisions of the Charter that may be relied upon by the referring court or tribunal cannot, of themselves, form the basis for such jurisdiction.”<sup>91</sup> This provides further evidence of the need for judicial training, as advocated in Section 2.1.

The judicial cooperation between the EU and national level can be further strengthened by allowing for additional channels for exchange and communication. A new and prominent example in this regard goes back to an initiative of the President of the CJEU who invited the presidents of the constitutional and supreme courts to participate in the creation of the ‘Judicial Network of the European Union’ (JNEU). The JNEU is intended to strengthen judicial cooperation in service of high-quality European justice. In September 2017, the first meeting of the JNEU took place at the Court in the presence of the network’s correspondents from 60 constitutional and supreme courts of the EU Member States. The network will foster mutual knowledge of the law and case-law of the Member States, and will also help to deepen the preliminary-ruling dialogue between the Court of Justice and the national courts.<sup>92</sup>

<sup>91</sup> CJEU (2018), Recommendations, para. 10.

<sup>92</sup> CJEU (2018), [2017 annual report](#). The year in review, p. 44.



### 3.3. Recent proposals: cooperation in the context of EU funds

#### Provision of EU funds for legal training

As mentioned by various civil society respondents in the consultation with the Fundamental Rights Platform, one recognised avenue for the EU to assist Member States in better implementing the Charter is to co-fund training for legal practitioners. It is the European Commission's official aim to ensure that half (around 700,000) of all legal practitioners in the EU are trained on EU law or on the national law of another Member State by 2020. This aim will be reached already this year. According to the report *European Judicial Training 2017*, "more than 143 000 legal practitioners (judges, prosecutors, court staff, lawyers, bailiffs and notaries) as well as trainees of these professional groups took part in training activities on EU law or on the national law of another Member State" in 2016.<sup>93</sup> However, it has to be stressed that only about 6 % of these training activities focus on fundamental rights.

This lack of fundamental rights focus and relevance did not go unnoticed. The European Commission recognises the need to increase the number of training activities on fundamental rights and the rule of law.<sup>94</sup> As part of the Commission strategy for the effective implementation of the EU Charter of Fundamental Rights,<sup>95</sup> the European Commission initiated a training programme consisting of a series of eight seminars in 2018 and 2019. These will reach about 544 judges and prosecutors, and will make them aware of the importance of applying existing national, international and EU legal frameworks to uphold fundamental rights and the rule of law.<sup>96</sup>

#### Provision of EU funds earmarked for fundamental rights projects

A second way of assisting Member States in better implementing the Charter is the provision of EU funds to fundamental rights-related projects and activities. Over recent decades, EU funding opportunities in the area of fundamental rights have increased. In the current Multiannual Financial Framework (MFF), the "Rights, Equality and Citizenship Programme" is especially relevant.<sup>97</sup> It has nine objectives, all related to the rights of persons as enshrined in the TEU, the TFEU, and the Charter (as well as in the international human rights conventions to which the Union has acceded).<sup>98</sup> The

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<sup>93</sup> European Commission (2016), [European Judicial Training 2016](#), Luxembourg, Publications Office.

<sup>94</sup> The need was also emphasised by [the recent public consultation for the evaluation of the 2011 European Judicial Training Strategy](#) and during the conference that wrapped up the results of this consultation: Shaping the future of European judicial training: Fit for the 21st century. The development of the future European Commission agenda on European judicial training is expected to build on these conclusions.

<sup>95</sup> European Commission (2010), [Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union](#), COM(2010) 573 final.

<sup>96</sup> These seminars are prepared and implemented with the support of the European Judicial Training Network (EJTN). The main objective is to foster and enhance awareness, among judges and prosecutors of the EU Member States, of fundamental rights as enshrined in the EU Charter of Fundamental Rights and of CJEU jurisprudence on the rule of law; as well as to increase the coherence and complementarity among existing training module materials, also with a view to their publication in the e-Justice Portal. Judges and prosecutors from candidate and potential candidate countries that are observers of EJTN are also addressed.

<sup>97</sup> In the foregoing MFF, relevant funding possibilities were spread over various programmes, namely: the Fundamental Rights and Citizenship Programme – aiming to strengthen the policy area of Freedom, Security and Justice; three Daphne Programmes – focused on assisting civil society organisations active in the field of fundamental rights; and the Progress Programme – supporting implementation of EU objectives in employment, social affairs and equal opportunities.

<sup>98</sup> Namely to promote non-discrimination; to prevent and combat racism, xenophobia, homophobia and other forms of intolerance; to promote and protect the rights of persons with disabilities; to promote equality between women and men and to advance gender mainstreaming; to prevent and combat all forms of violence against children, young people and women, as well as violence against other groups at risk; in particular groups at risk of violence in close relationships, and to protect victims of such violence; to promote and protect the rights of the child; to contribute to ensuring the highest level of protection of privacy and personal data; to promote and enhance the

financial envelope of the programme is close to EUR 440 million for the period 2014-2020. This is complemented by the “Europe for Citizens’ programme”, which aims to encourage direct citizen participation at EU level and promote dialogue between the EU institutions, civil society organisations and municipalities. Its financial envelope is EUR 185 million for the same period.<sup>99</sup>

In its proposal for the next MFF (2021-2027), the European Commission proposes a new “Rights and Values programme” with a total allocation of EUR 641,7 million for the period 2021-2027. It would bring together the two above-mentioned programmes and aim to achieve three specific objectives. The equality and rights strand (equality, gender mainstreaming, combat racism, rights of the child, disability, Union citizenship, data protection) and the Daphne strand (fight against violence and the protection of victims of violence) would be allocated EUR 408,7 million, whereas the Citizens’ engagement and participation strand would be given EUR 233 million. Critics claim that:

- first, this is too small an increase (together the two programmes already now dispose over EUR 624 million);
- second, the programme misses out on specifically fostering and supporting the creation of an active and sustainable sector of civil society organisations at national and local levels with the capacity to fulfil its role in safeguarding these values;
- third, access to funds for civil society organisations could be further simplified.<sup>100</sup>

### Current provisions for the spending of EU funds

Whereas the funding earmarked for fundamental rights is in its overall dimension rather minimal – accounting for only 0,04% of the overall MFF – well more than a third of the current MFF is spent via the European Regional Development Fund (ERDF), the European Social Fund Plus (ESFplus), the Cohesion Fund (CF), the European Maritime and Fisheries Fund (EMFF), the Asylum and Migration Fund (AMF), the Internal Security Fund (ISF) and the Border Management and Visa Instrument (BMVI).

It is hence of major practical relevance to ensure that these large scale funds are spent in a way that not only respects, but also effectively contributes to the promotion of, fundamental rights.<sup>101</sup> The provisions on the management of these funds are laid down in the Common Provision Regulation (CPR). The current CPR introduced the concept of ‘ex-ante conditionalities’ (preconditions) containing rights-related requirements to access EU funding. However these requirements are limited to the areas of non-discrimination, gender and disability.<sup>102</sup>

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exercise of rights deriving from citizenship of the Union; and, finally, to enable individuals in their capacity as consumers or entrepreneurs in the internal market to enforce their rights deriving from Union law, having regard to the projects funded under the Consumer Programme. See Art. 4 of [Regulation \(EU\) No. 1381/2013 of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020](#), OJ L 354 as of 28 December 2013.

<sup>99</sup> [Council regulation \(EU\) No. 390/2014 of 14 April 2014 establishing the ‘Europe for Citizens’ programme for the period 2014-2020](#), OJ L 115 as of 17 April 2014.

<sup>100</sup> See, for example, EFC (European Foundation Centre) and Dame (Donors and Foundations Networks in Europe), [Letter](#) to European Commissioner Vera Jourova, 19 July 2018.

<sup>101</sup> For the national side of this theme see Viță, V. and Podstawa, K. (2017), [When the EU Funds meet the Charter of Fundamental Rights: on the applicability of the Charter of Fundamental Rights to EU Funds implemented at national level](#), Global Campus Working Paper 1/17.

<sup>102</sup> Article 19 and Annex XI, Part I and II, of [Regulation \(EU\) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the](#)

The Commission believes that these conditionalities helped improve the implementation of relevant EU legislation in several Member States. This was achieved mainly by instigating the development of Member States' strategies and the adoption of other specific implementation steps, such as designating authorised persons or institutions, training and dissemination actions and development of necessary administrative capacity.<sup>103</sup>

However, the current framework for the funding period 2014-2020 has also been subject to criticism. According to a 2015 European Ombudsman's (EO) Decision, it "does not address in a visible way the need for the rights enshrined in the Charter of Fundamental Rights of the EU (the 'Charter') to be respected when EU cohesion policy is implemented; nor does it provide for measures to be taken if those rights are violated".<sup>104</sup> The European Court of Auditors, for its part, assessing the system of ex-ante conditionalities as such, pointed out that it "provided a consistent framework for assessing the Member States' readiness to implement Cohesion policy, but it is unclear to what extent this has effectively led to changes on the ground".<sup>105</sup> At the same time, it underlines that the real impact of the use of EU funds depends largely on the ownership taken by Member States, which often tend to adopt overly positive, but inconsistent self-assessments.<sup>106</sup> As admitted by the Commission, "the current assessment process is a one-off exercise" and "there is a risk that measures taken to fulfil the ExAC [ex ante conditionalities] could be reversed".<sup>107</sup>

In response to the 2015 EO's Decision and 'guidelines for improvement',<sup>108</sup> the Commission published guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the EU cohesion policy funds in 2016.<sup>109</sup> It reminds national authorities of the legal status of the Charter and its relevance when carrying out actions falling within the scope of EU funding regulations. The guidance suggests also a 'fundamental rights checklist' that national authorities are invited to use when assessing whether their actions do fall within the scope of EU law and if they have an impact on the fundamental rights of the Charter. However, the guidelines are as such not binding EU secondary law.

The lesson learned from the operation of the ex ante conditionalities 2014-2020 were recently summarised as follows: "the successful operation of ex ante conditionalities relies dramatically on clearly defined and commonly shared objectives; lack of subsequent follow-up, monitoring and evaluation of outputs decreases effect; ex ante conditionalities critically rely on a genuine and congruent commitment of responsible

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[European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation \(EC\) No. 1083/2006](#), OJ L 347, 20 December 2013. See also European Commission (2014), [Guidance on Ex ante Conditionalities for the European Structural and Investment Funds](#), Part I and Part II, pp. 338-357.

<sup>103</sup> European Commission (2017), [The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds](#), SWD(2017) 127 final, p. 10 and pp. 14-15; European Commission (2016), [The implementation of the provisions in relation to the ex-ante conditionalities during the programming phase of the European Structural and Investment \(ESI\) Funds](#), METIS GmbH, pp. 46-47.

<sup>104</sup> European Ombudsman (2015), [Decision adopted on the 11 May 2015, Case OI/8/2014/AN](#), para. 4.

<sup>105</sup> European Court of Auditors (2017), [Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments](#), p. 24.

<sup>106</sup> *Ibid.*, p.27.

<sup>107</sup> European Commission (2017), [The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds](#), SWD(2017) 127 final, p.18.

<sup>108</sup> European Ombudsman (2015), [Decision adopted on the 11 May 2015, Case OI/8/2014/AN](#), para. 48.

<sup>109</sup> European Commission (2016), [Guidance on ensuring the respect for the Charter of Fundamental Rights of the European Union when implementing the European Structural and Investment Funds \('ESI Funds'\)](#), OJ C 269, 23 July 2016.

stakeholders at the national and regional level; institutional coordination at the EU and national level is of critical importance”.<sup>110</sup> This confirms the need for an efficient cooperation between the EU and national authorities.

### **Proposal for an enhanced fundamental rights conditionality**

The proposal for the new CPR for the programming period 2021-2027, as presented on 31 May 2018,<sup>111</sup> elaborates and reinforces the conditionality mechanism of the current CPR. The ex-ante conditionalities concept is strengthened and developed into an ‘enabling conditions’ system, which introduces a set of four horizontal and 16 thematic ‘enabling conditions’ to be monitored and applied throughout the new programming period, affecting payments to Member States for the operations supported by EU Funds at any stage of their implementation.<sup>112</sup> Two of the four horizontal enabling conditions are the “effective application and implementation of the EU Charter of Fundamental Rights” and the “implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC.”<sup>113</sup> Out of the 16 thematic enabling conditions, some have an immediate relevance for fundamental rights such as the need to have in place a National Roma Integration Strategy as well as national strategic frameworks for gender equality and for social inclusion and poverty reduction.<sup>114</sup>

With the introduction of a general Charter-conditionality, the new draft CPR adopts a more comprehensive approach regarding respect of the Charter as a whole and not a fragmented one, as is the case under the current CPR, which refers solely to the principles of non-discrimination and gender equality.<sup>115</sup> A further improvement is that horizontal enabling conditions apply automatically to all programmes and specific policy objectives covered by the new CPR.<sup>116</sup> No payments will be carried out before a positive assessment by the Commission about the fulfilment the Charter condition.<sup>117</sup> The European Commission will examine the information provided by Member States and declare whether or not it agrees with the Member State’s self-assessment. Thus Member States must establish appropriate mechanisms to ensure compliance with the Charter provisions during both the preparation and the implementation of their programmes and operations supported by EU Funds.<sup>118</sup> If the Commission concludes throughout this period that there has been a breach of a certain enabling condition, relevant payments will be frozen.<sup>119</sup>

The new CPR will provide common rules to seven shared management funds (CF, EMFF, ERDF, ESFplus, AMIF, BMVI and ISF). By introducing the enabling condition to respect the Charter of Fundamental Rights, the CPR is expected to “have a positive

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<sup>110</sup> Viță, V. (2018), *Research for REGI Committee - Conditionalities in Cohesion Policy*, 11 September 2018.

<sup>111</sup> European Commission (2018), [Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument](#), (CPR), COM(2018) 375 final.

<sup>112</sup> Article 11(1) and Annexes III and IV of the draft CPR.

<sup>113</sup> Article 11(1) and Annex III of the draft CPR.

<sup>114</sup> Article 11(1) and Annex IV of the draft CPR.

<sup>115</sup> *Ibid.*

<sup>116</sup> *Ibid.*

<sup>117</sup> Article 11(1) in conjunction with Article 11(5) and Annex III of the draft CPR.

<sup>118</sup> Article 11(4) of the draft CPR.

<sup>119</sup> Recital 17 and Article 11(6) of the draft CPR.

impact on the respect and protection of all fundamental rights in the managements of all seven funds.”<sup>120</sup>

Respect for the rule of law is intended to be guaranteed through another horizontal instrument – a regulation “on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States”.<sup>121</sup> Interestingly, the proposed regulations establishing the various funds differ in how they refer to the two horizontal instruments (the CPR and the regulation on rule of law deficiencies) and how they refer to fundamental rights in general.<sup>122</sup> None of the six draft regulations establishing the seven funds includes a prominent horizontal fundamental rights clause that would in the operational text of the regulations underline the necessity to respect and promote fundamental rights.

### **Need for efficient monitoring at national level**

Whereas the introduction of a general Charter conditionality is a positive step, its general nature carries the risk that it results in a formalistic box-ticking exercise if not accompanied with a convincing monitoring framework. The success or less of the new scheme will depend on how the Member States deliver on the obligation to establish “arrangements to ensure verification of compliance of operations supported by the Funds with the Charter of Fundamental Rights” and the “reporting arrangements to the monitoring committee” on this compliance.<sup>123</sup>

The proposal for the CPR strengthens the role of monitoring committees.<sup>124</sup> Their functions explicitly include examining the fulfilment of enabling conditions throughout the programming period.<sup>125</sup> Member States have to assure the participation not only of national authorities, but also of economic and social partners, relevant bodies representing civil society and environmental partners, as well as bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination.<sup>126</sup>

Reference to fundamental rights bodies is a new element, calling on Member States to designate in monitoring committees human rights institutions too, including Ombudsman institutions. The challenge is how to ensure their effective participation and contribution in the monitoring process. Member States will need to establish

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<sup>120</sup> European Commission (2018), [Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument](#), (CPR), COM(2018) 375 final, p.5.

<sup>121</sup> European Commission (2018), [Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the member States](#), COM(2018) 32.

<sup>122</sup> All the regulations but the one on the ERDF and CF refer, in their preamble, to the regulation on the rule of law deficiencies. References to fundamental rights are found in four of the six regulations establishing the seven funds – the [Draft regulation on ESF Plus, COM\(2018\)382 final](#) and the [Draft regulation on the EMFF, COM\(2018\)390 final](#) do not have such a reference. Only two of the six proposals for regulations mention fundamental rights in their operational text, namely Art. 3 of [the Draft regulation on the AMF, COM\(2018\) 471 final](#), and Art. 3 of [the Draft regulation on the BMVI, COM\(2018\) 473 final](#). The reference states in the provision on the instrument's scope that the objective of the instrument shall be achieved “in full compliance” (BMVI) with the “Union's commitments to fundamental rights” (in fact the AMF regulation differs in wording as it only asks for “compliance” without the qualification “full”). References to fundamental rights in specific relevant contexts, such as the evaluation of the respective instrument or the issuing of performance reports (compare, for instance, in the context of the AMF, Art. 29 and 30 in COM(2018) 471 final) are absent.

<sup>123</sup> Annex III of the draft CPR.

<sup>124</sup> Art. 33-36 in conjunction with Article 6 of the draft CPR.

<sup>125</sup> Art. 35(1)(h) of the draft CPR.

<sup>126</sup> Art. 34 in conjunction with Art. 6 of the draft CPR.

appropriate legal and institutional arrangements, including human resources and institutional capacity,<sup>127</sup> to better apply the fulfilment criteria of the enabling conditions, as foreseen in the new draft CPR. In this regard, Member States and relevant national authorities could find it useful that the European Commission, with the contribution of agencies such as FRA, provides technical and capacity-building assistance, including training, on how to better monitor respect of the Charter when making use of EU Funds. What remains unclear is how the enabling condition's fulfilment will be examined and assessed at the initial phase, when the monitoring committees are not yet established.

## Mainstreaming the Charter

Under the draft Common Provisions regulation (CPR), managing authorities have to “establish and apply criteria and procedures which are non-discriminatory, transparent, ensure gender equality and take account of the Charter of Fundamental Rights of the European Union”.<sup>128</sup> The draft CPR obliges Member States and the Commission to “ensure the coordination, complementarity and coherence between the Funds and other Union instruments such as the Reform Support Programme, including the Reform Delivery Tool and the Technical Support Instrument.”<sup>129</sup> The draft CPR also makes the link between Country-Specific Recommendations (CSRs) and programming documents explicit<sup>130</sup> thereby bridging the Commission's economic agenda in the context of the European Semester with the programming under the EU funds.

Many national activities sparked and funded by the EU have the potential to further the implementation of the Charter. For instance, the EU's Reform Support Programme has the objective to contribute to strengthening the administrative capacity of the Member States in relation to challenges faced by institutions, governance, public administration, and economic and social sectors.<sup>131</sup> Reforms financed under this tool could and should contribute to a better implementation of the Charter. To give a practical example: Under the current *ex ante* conditionalities, “Malta, Portugal, and Slovenia introduced an SME [Small and Medium Enterprises] Test, to ensure assessment and monitoring of the impact of national legislation on SMEs”.<sup>132</sup> Such an amendment of national legislation on legislative impact assessments could be an ideal opportunity to introduce a proper Article 51 screening as proposed in Section 2.2. The calls for more and better targeted Charter training (see Section 2.1.) could also be mainstreamed in national Judicial and Administrative reform strategies, Vocational Education and Training (VET) or Life Long Learning (LLL) Strategies.

## FRA Opinion 7: A new Charter-conditionality for EU funds

The provision of EU funds for the training of legal practitioners is key. However, currently provided training is dedicated to fundamental rights only to a minor degree. EU programmes that are earmarked for fundamental rights-related projects form another important contribution – but have a limited financial dimension. EU Funds,

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<sup>127</sup> See in this context also European Commission (2018), Recommendation on standards for equality bodies, C(2018) 3850 final, 22.6.2018.

<sup>128</sup> Art. 67 (1) of the draft CPR.

<sup>129</sup> Art. 4 Para 4 of the draft CPR.

<sup>130</sup> See, for example, Art. 8 lit (a), Article 9 (1), Art. 14 (1) lit (a), Art. 18 (1), Art. 35 (1) lit (c) of the draft CPR.

<sup>131</sup> See the current proposal for a new regulation on the establishment of the Reform Support Programme, COM (2018) 391 final, 31 May 2018.

<sup>132</sup> European Commission (2017), *The Value Added of Ex ante Conditionalities in the European Structural and Investment Funds*, SWD (2017) 127 final, 31 March 2017, p. 7.



however, have remarkable practical impact. The large EU Funds – like the European Regional Development Fund (ERDF), the European Social Fund Plus (ESF), the Asylum and Migration Fund (AMF), and others – represent a substantial portion of the EU's overall budget. Significantly, the European Commission has proposed a new form of conditionality for these funds. This would not just cover a few selected dimensions of the Charter, as has been the case so far. Instead, the full spectrum of Charter rights would need to be applied throughout the full project cycle of the activities using resources provided by the EU Funds. The potential practical implications of this revamped conditionality are considerable – if the obligation is coherently referred to in the relevant legal texts and comes with effective monitoring mechanisms at the national level.

***The EU legislator should adopt the new enabling condition covering the effective application and implementation of the EU Charter of Fundamental Rights, as laid down in the Common Procedure Regulation proposed by the European Commission for the next Multiannual Financial Framework 2021-2027. The legislator should enhance the visibility of this new conditionality by introducing strong and consistent fundamental rights clauses in the operational text of the draft regulations establishing the large EU Funds.***

***When implementing the financial instruments, EU institutions should put special emphasis on the horizontal conditionalities related to fundamental rights and make sure that the respect for the Charter provisions and the promotion of their application is mainstreamed in all activities.***

***EU Member States should engage in a dialogue with Equality Bodies and National Human Rights Institutions, including Ombuds Institutions, to explore their effective participation in the preparation phase and the monitoring process of the implementation of EU-funded programmes. Allocating human resources and adequate funding to them, and earmarking EU resources for that purpose, will bolster the efficiency of the new Charter conditionality.***

***Where Member States and competent national authorities consider it useful, the European Commission, with the support of agencies such as FRA, could provide technical assistance and training to Equality Bodies and National Human Rights Institutions, including Ombuds Institutions, on how to monitor effectively the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of Persons with Disabilities with regard to the implementation of the EU Funds.***

### 3.4. How the EU could better assist EU Member States: views from the consultation

What are other avenues via which the EU and its Member States could cooperate – besides the administration of EU funds and judicial dialogue – to improve implementation of the Charter at national level? The agency asked its Fundamental Rights Platform whether and how the EU – its institutions, agencies and policies – could better assist EU Member States in this regard. Of the 114 respondents, 96 said that there is room for the EU to play such a role.

When asked for examples of how this could best be done, three prominent clusters of proposals emerged. Many respondents referred to activities and funding provided by the EU to raise awareness. Think tanks, networks, focal points, schools, youth organisations and others were mentioned. A concrete proposal was to make available



“list of cases, ideally also with videos and short testimonies, where the Charter made a difference on people's lives”.<sup>133</sup>

Another cluster of proposals concerned training measures. Various respondents stressed in this context the relevance of civil servants, judges, magistrates, prosecutors, as well as university students. A third cluster of proposals focused on the implementation of existing EU law in the Member States. Proposals included improving the EU's capacity to monitor developments on the ground and to follow up with persuasive steps and penalties. The EU was asked to step up its role as guardian of EU primary law. One respondent said that “DG regio could help to make sure that projects [funded by the European Union] are supporting the implementation of the Charter”.<sup>134</sup> There were proposals to issue practical implementing guidelines that help national actors to implement EU law in a fundamental rights-conforming manner. Another respondent called for the EU to assist “national Parliaments when transposing EU legislation”.<sup>135</sup>

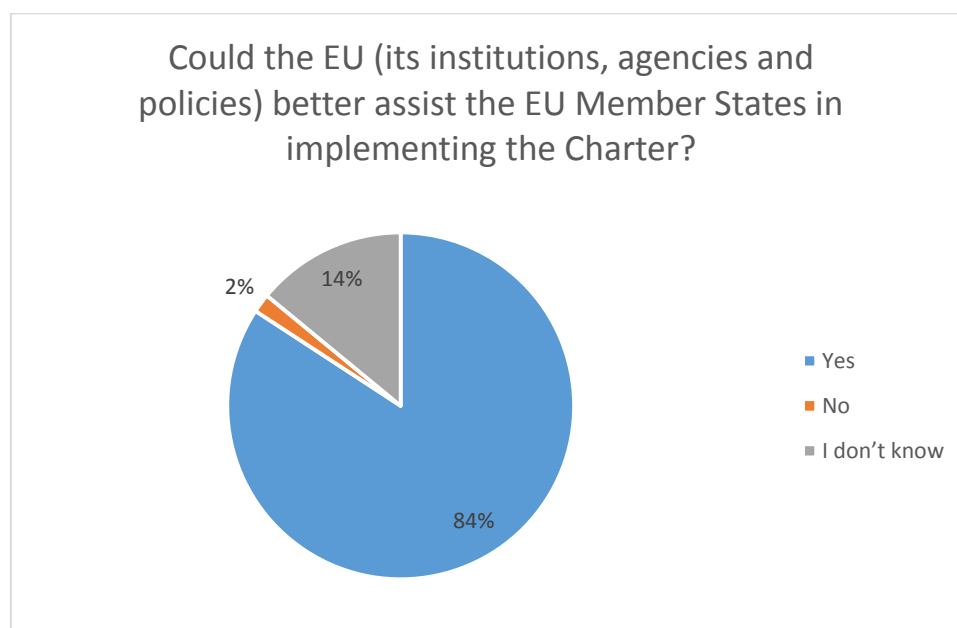
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<sup>133</sup> A respondent in the anonymous online consultation carried out in the framework of the agency's Fundamental Rights Platform in July 2018.

<sup>134</sup> A respondent in the anonymous online consultation carried out in the framework of the agency's Fundamental Rights Platform in July 2018.

<sup>135</sup> A respondent in the anonymous online consultation carried out in the framework of the agency's Fundamental Rights Platform in July 2018.

**Figure 16: Civil society organisations on the EU's potential to better assist Member States in implementing the Charter**



*Note: Based on replies to the anonymous online consultation carried out in the framework of the agency's Fundamental Rights Platform in July 2018.*

*Source: FRA, 2018*

For the purpose of this Opinion, the agency also consulted its National Liaison Officers (NLOs) in the 28 national governments on how the EU – its institutions, agencies and policies – could better assist EU Member States in implementing the Charter. Of the replies received, training measures amongst relevant groups were most often mentioned. One country stated that they would appreciate regular updates on CJEU case law (and possibly national courts) in which the Charter made a difference. Three Member States referred to the upcoming FRA handbook on the applicability of the Charter as a good initiative on which to further build. Another Member State proposed that the EU should offer “networking opportunities” amongst judges and other court officials on the topic of the Charter’s implementation. National Liaison Officers from two countries found it worthwhile to explore the idea of creating Charter focal points. One of them proposed that a network of Charter focal points could bring together professionals from the NHRIs and magistrates in the Member States and thus function as a platform for legal practitioners to exchange views and experiences on the application of the Charter and the relevant national and European case law, as well as legal studies in the field. Another NLO stressed the interest of Member States in learning about practical examples showing how specific articles of the Charter are used in other countries. This could include MOOC sessions, videos and PowerPoints on selected topics.

### 3.5. Exchanges between EU Member States: a way forward

The proposals mentioned above are just the result of two ad hoc and rather superficial consultations. More could be harvested if a regular exchange at a greater scale were to be put in place. A question at this point is where in the EU institutional setting a regular exchange of experiences and practices would be best placed. The Council of the European Union – part of the EU legislature and at the same time bringing together all EU Member States – appears especially appropriate.

Since 2005, the Council disposes over a “Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons” (FREMP), which became permanent in nature in 2009. The working party deals with issues related to the EU Charter of Fundamental Rights, and with negotiations regarding EU accession to the ECHR. It is also responsible for preparatory work in the legislative procedures of the Council in the field of fundamental rights, citizens’ rights and free movement; all matters in respect to and promotion of fundamental rights in the EU; and annual exchanges with FRA and discussion of its reports and the follow-up to the latter. The working party meets in different formations when necessary, depending on the subject of the agenda.<sup>136</sup>

Against this background, FREMP appears to offer a well-placed institutional space for regular meetings of EU Member States to exchange experiences, practices, problems and needs in the context of implementation of the Charter of Fundamental Rights. Such an exercise could be prepared by an expert seminar and/or questionnaires sent to national administrations, experts and the judiciary to gather relevant information from the ground. Representatives from the European Commission and the European Parliament would be invited to the exchange in FREMP so that the results of such a structured exchange would not only feed into the Council’s work and its relevant conclusions, but also into the work of the relevant committees and units within the European Parliament and the European Commission.

### FRA Opinion 8: Regular exchange among EU Member States

No institutional space and practice within the EU system is currently specifically dedicated to in-depth exchanges of Member States’ experiences with implementing the Charter. The “Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons” (FREMP) is the Council’s working group responsible for fundamental rights-related issues, including the Charter. It brings together relevant civil servants in this regard. The working group appears to provide an appropriate platform for all three branches of government to exchange experiences with Charter implementation in order to learn from promising practices and address shortcomings.

***The EU and its Member States should consider establishing an annual ‘Charter exchange’ in the Council’s “Working Party on Fundamental Rights, Citizen's Rights and Free Movement of Persons” (FREMP). Based on relevant information regarding local, regional and national practices and experiences concerning the implementation of the Charter, such an exchange could help promote a common understanding of the Charter’s practical application and its needs. Such an annual Charter exchange in FREMP should also allow for relevant participation by the European Commission and the European Parliament so that the results can also feed into the work of these institutions. The Charter exchange could be prepared by an expert seminar and/or a structured process collecting the relevant data, evidence and promising practices.***

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<sup>136</sup> See the Council [website](#). See Council document 10075/17, 19.6.2017, footnote 50.

## Annex 1: Selected FRA activities in the context of the Charter

**Charterpedia:** an online tool that provides a one-stop-shop of Charter-related information, with a focus on European and national case law ([case-law database](#)). Charterpedia was originally developed by the European Parliament and then handed over to the agency with a view to guaranteeing regular maintenance and expansion of the content. In 2015, the Council of the EU called on FRA to further develop Charterpedia and “underline[d] the essential role of the Agency in raising awareness of the Charter rights”.<sup>137</sup> Charterpedia is currently being extended to cover all relevant CJEU case law, relevant national constitutional and international law, country-specific information and more. Charterpedia is also available via mobile phone as an “[EU Charter app](#)”.

**Thematic Handbooks:** FRA produces, in cooperation with the Council of Europe and the European Court of Human Rights (and documentary support by the Court of Justice of the European Union), handbooks for legal practitioners presenting the relevant case law on the Charter and the European Convention of Human Rights in the following thematic areas:

- data protection;
- non-discrimination law;
- access to justice;
- rights of the child;
- asylum, borders and immigration.

Another relevant handbook is FRA’s forthcoming handbook providing guidance on the application of the EU Charter of Fundamental Rights in law and policymaking at national level. The Charter also features prominently in FRA reports, which offer relevant information and analysis – as the example of the report “Freedom to conduct a business: exploring the dimensions of a fundamental right” shows.<sup>138</sup>

**FRA Opinions:** The Charter forms a prominent legal standard in FRA’s work.<sup>139</sup> This is especially evident in FRA’s legal Opinions, where the agency provides assistance and expertise also in the context of legislative proposals. Recently FRA has delivered Opinions on:

- Fundamental rights implications of storing biometric data in identity documents and residence cards;<sup>140</sup>
- The revised Visa Information System and its fundamental rights implications;<sup>141</sup>

<sup>137</sup> Draft Council conclusions on the application of the Charter on Fundamental Rights in 2014.

<sup>138</sup> FRA (2015), [Freedom to conduct a business: exploring the dimensions of a fundamental right](#), Luxembourg.

<sup>139</sup> Council regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, Preamble (9): “The Agency should refer in its work to fundamental rights within the meaning of Article 6(2) of the Treaty on European Union, including the European Convention on Human Rights and Fundamental Freedoms, and as reflected in particular in the Charter of Fundamental Rights, bearing in mind its status and the accompanying explanations. The close connection to the Charter should be reflected in the name of the Agency.”

<sup>140</sup> FRA (2018), [Fundamental rights implications of storing biometric data in identity documents and residence cards](#), FRA Opinion – 3/2018, Luxembourg, Publications Office of the European Union (Publications Office).

<sup>141</sup> FRA (2018), [The revised Visa Information System and its fundamental rights implications](#), FRA Opinion – 2/2018, Luxembourg, Publications Office.

- Interoperability and fundamental rights implications;<sup>142</sup>
- The impact on fundamental rights of the proposed Regulation on the European Travel Information and Authorisation System (ETIAS);<sup>143</sup>
- Improving access to remedy in the area of business and human rights at the EU level;<sup>144</sup>
- The impact of the proposal for a revised Eurodac Regulation on fundamental rights;<sup>145</sup>
- Fundamental rights in the 'hotspots' set up in Greece and Italy;<sup>146</sup>
- The impact on children of the proposal for a revised Dublin Regulation;<sup>147</sup>
- Requirements under Article 33 (2) of the UN Convention on the Rights of Persons with Disabilities within the EU context;<sup>148</sup>
- The development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information;<sup>149</sup>
- EU common list of safe countries of origin.<sup>150</sup>

<sup>142</sup> FRA (2018), [Interoperability and fundamental rights implications](#), FRA Opinion – 1/2018, Luxembourg, Publications Office.

<sup>143</sup> FRA (2017), [The impact on fundamental rights of the proposed Regulation on the European Travel Information and Authorisation System \(ETIAS\)](#), FRA Opinion – 2/2017, Luxembourg, Publications Office.

<sup>144</sup> FRA (2017), [Improving access to remedy in the area of business and human rights at the EU level](#), FRA Opinion – 1/2017, Luxembourg, Publications Office.

<sup>145</sup> FRA (2016), [The impact of the proposal for a revised Eurodac Regulation on fundamental rights](#), FRA Opinion – 6/2016, Luxembourg, Publications Office.

<sup>146</sup> FRA (2016), [FRA Opinion on fundamental rights in the 'hotspots' set up in Greece and Italy](#), FRA Opinion – 5/2016, Luxembourg, Publications Office.

<sup>147</sup> FRA (2016), [FRA Opinion on the impact on children of the proposal for a revised Dublin Regulation](#), FRA Opinion – 4/2016, Luxembourg, Publications Office.

<sup>148</sup> FRA (2016), [FRA Opinion concerning requirements under Article 33 \(2\) of the UN Convention on the Rights of Persons with Disabilities within the EU context](#), FRA Opinion – 3/2016, Luxembourg, Publications Office.

<sup>149</sup> FRA (2016), [FRA Opinion on the development of an integrated tool of objective fundamental rights indicators able to measure compliance with the shared values listed in Article 2 TEU based on existing sources of information](#), FRA Opinion – 2/2016, Luxembourg, Publications Office.

<sup>150</sup> FRA (2016), [FRA Opinion concerning an EU common list of safe countries of origin](#), FRA Opinion – 1/2016, Luxembourg, Publications Office.

## Annex 2: Agencies (and other bodies) covered by the consultation

Energy regulators ACER	Banking authority EBA	GNSS (Navigation Satellite System) GSA	Police Europol	Translations CdT	Security studies EUISS	SESAR Joint Undertaking
Electronic comms. regulators BEREC	Disease prevention ECDC	Gender equality EIGE	Railways ERA	Education, audiovisual and culture	Satellite Centre SatCen	Shift2Rail Joint Undertaking
Plant variety CPVO	Vocational training Cedefop	Insurance and occupational pensions EIOPA	Securities and markets ESMA	SMEs (enterprises) EASME	EURATOM supply ESA	Clean Sky 2 Joint Undertaking
Safety and health at work EU-OSHA	Chemicals ECHA	Maritime safety EMSA	Training foundation ETF	Research council ERCEA	Fusion for Energy F4E	BBJ Joint Undertaking (Bio-based)
Border and coast guard Frontex	Environment EEA	Medicines EMA	Fundamental rights FRA	Consumers, health, agriculture, food Chafea	Innovation and technology EIT	
Large-scale IT systems Eu-LISA	Fisheries control EFCA	Drugs and drug addiction EMCDDA	Intellectual property EUIPO	Research Executive Agency REA	ECSEL Joint Undertaking (JU) (digital tech)	
Asylum support EASO	Food safety EFSA	Network and info. security ENISA	Single Resolution Board (banking) SRB	Innovation & networks INEA	Fuel Cells and Hydrogen 2 Joint Undertaking	
Aviation safety EASA	Living and working conditions Eurofound	Law enforcement training CEPOL	Judicial cooperation Eurojust	Defence EDA	IMI 2 Joint Undertaking IMI 2 JU	
Types of agencies				European Union Agencies which responded to the questionnaire		
Decentralised (33)				Other organisations (8)		
Executive (6)				EURATOM (2)		
Executive under common security and defence policy (3)						

Note: For the agencies' full names, see the list of acronyms. More information on the agencies of the EU is available online.

Source: FRA, 2018



Publications Office

ISBN: 978-92-9474-239-1  
doi: 10.2811/773609



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